Constitution of WAITOC Association Incorporated

WAITOC
Western Australian Indigenous Tourism Operators Council

WAITOC INCORPORATED
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Constitution of

WAITOC Association Incorporated
Registration No, A1010338B

As amended 7 November 2024

WAITOC

Western Australian Indigenous
Tourism Operators Council

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WAITOC Association Incorporated
Registration No. A1010338B

1. Nature of the Organisation

(a) This Organisation is an incorporated association registered in Western Australia.

(b) The name of the Organisation is WAITOC Association Incorporated.

(c) The Organisation does not have the power to issue shares.

2. Definitions and interpretation

2.1 Definitions

The following definitions apply in this Constitution unless the context requires otherwise:

Aboriginal Tourism Business means an Aboriginal person, or an entity of which at least 50% of its owners are Aboriginal persons, currently operating a Business within the tourism industry within Western Australia;

Aboriginal means a person that self identifies as an Indigenous Australian;

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);

Act means the *Associations Incorporation Act 2015* (WA);

Annual fee means the annual fee determined under clause 6.2;

Associate Member means a person who meets the eligibility requirements in clause 5.5(c) and is admitted to membership of the Organisation in accordance with clause 6.1(d)(iii);

ATB Member means an organisation or a natural person who meets the eligibility requirements in clause 5.5(a) and who has notified the Board that it wants to be an ATB Member in accordance with clause 5.5(a)(i);

Board means the Board of Directors of the Organisation from time to time;

Business means a business operated by a person or an entity that has a registered Australian Business Number issued by the Australian Business Register;

Business Day means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia;

Chairperson means the Chairperson of the Board appointed under clause 12.4;

CEO means the chief executive officer of the Organisation from time to time;

Constitution means this constitution as amended, supplemented or replaced from time to time;

Co-Opted Director has the meaning given to that term in clause 10.2(d);

Corporations Act means the *Corporations Act 2001 (Cth)* and any regulations made under that statute;

Department has the meaning given to that term in the Act;

Director means a person appointed or elected to the office of director of the Organisation;

Executive Officer means an executive officer of the Organisation;

Financial Year means each period of 12 months commencing on 1 July;

Financial Records includes:

(a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and

(b) documents of prime entry; and

(c) working papers and other documents needed to explain:

(i) the methods by which financial statements are prepared; and

(ii) adjustments to be made in preparing financial statements;

Financial Report means a financial report of a tier 2 association or tier 3 association prepared in accordance with Part 5 of the Act and which consists of:

(a) the Financial Statements for the relevant Financial Year;

(b) the notes to the Financial Statements; and

(c) the Board's declaration about the Financial Statements and notes;

Financial Statements means financial statements prepared in accordance with Division 3 of the Act;

Full Corporate Member means a person who meets the eligibility requirements in clause 5.5(b) and is admitted to membership of the Organisation in accordance with clause 6.1(d)(i);

Insolvency Event means, in relation to a person, any one or more of the following events or circumstances:

(a) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;

(b) having a controller (as defined in the Corporations Act), receiver, receiver and manager, administrator, liquidator (whether provisional or otherwise) or analogous person appointed to it or any of its property;

(c) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the Corporations Act or any other law;

(d) seeking protection from its creditors under any law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; or

(e) any analogous event or circumstance to those described in paragraphs (a) to (d) under any law;

Member means a person, body corporate or incorporated association that becomes an ATB Member, a Full Corporate Member or an Associate Member *of the Organisation under this Constitution*;

Objects means the objects of the Organisation as set out in clause 3;

Office means the registered office of the Organisation;

Ordinary Resolution means a resolution passed by the Organisation by a simple majority of the votes entitled to be cast in respect of that resolution, and does not include a Special Resolution;

Organisation means WAITOC Association Incorporated. (Registration No.A1010338B);

Postal Vote has the meaning given to the term in clause 9.1(b)(ii);

Postal Vote Form means a form submitted in accordance with clause 9.8 by a Full Corporate Member who is entitled to attend and vote at a general meeting of the Organisation, pursuant to which the Full Corporate Member casts its Postal Vote on a resolution to be proposed at a general meeting;

Present means, in connection with a meeting, a Member being present in person or by attorney or Representative, and includes being present at a different venue from the venue at which other Members are participating in the same meeting, providing the pre-requisites for a valid meeting at different venues are observed;

Register means the register of Members of the Organisation;

Representative means a natural person nominated by an organisation in accordance with clause 5.6;

Special Resolution is a resolution passed by the Organisation in accordance with section 51 of the Act;

Tax Act means the *Income Tax Assessment Act 1997* (Cth);

tier 1 association means an incorporated association to which section 64(1) of the Act applies;

tier 2 association means an incorporated association to which section 64(2) of the Act applies;

tier 3 association means an incorporated association to which section 64(3) of the Act applies; and

Vice-Chairperson means the Vice-Chairperson of the Board as appointed under clause 12.4(b).

2.2 Interpretation

In this Constitution, unless the context requires otherwise:

(a) the singular includes the plural and vice versa;

(b) a gender includes the other genders;

(c) the headings are used for convenience only and do not affect the interpretation of this Constitution;

(d) other grammatical forms of defined words or expressions have corresponding meanings;

(e) a reference to a document includes the document as modified from time to time and any document replacing it;

(f) if something is to be or may be done on a day that is not a Business Day, then it must be done on the next Business Day;

(g) the word "person" includes a natural person, partnership, body corporate, association, governmental or local authority, agency and any other body or entity whether incorporated or not;

(h) the word "month" means calendar month, and the word "year" means 12 months;

(i) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;

(j) a reference to a thing includes a part of that thing;

(k) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;

(l) wherever "include", "for example" or any form of those words or similar expressions is used, it must be construed as if it were followed by "(without being limited to)";

(m) money amounts are stated in Australian currency unless otherwise specified; and

(n) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body that performs most closely the functions of the defunct body.

2.3 Compliance with the Act

This Constitution is subject to the Act and where there is any inconsistency between a clause of this Constitution and the Act which is not permissible under the Act, the Act prevails to the extent of the inconsistency.

2.4 Transitional

Everything done under this Constitution of the Organisation continues to have the same operation and effect after the adoption of any successor Constitution as if properly done under that Constitution.

3. Objects and powers of the Organisation

(a) The Objects for which the Organisation is established are to:

(i) promote and raise the profile of Western Australia's Aboriginal tourism industry on a state and national level;

(ii) encourage and support new and emerging Aboriginal tourism operators in Western Australia;

(iii) encourage greater collaboration between Aboriginal tourism operators and non-Aboriginal tourism operators including the promotion of joint ventures;

(iv) encourage the development of the existing Aboriginal tourism industry in Western Australia;

(v) encourage the employment of Aboriginal people by the wider tourism industry;

(vi) encourage and develop a better relationship between Aboriginal tourism operators and Western Australian, Australian and private tourism organisations;

(vii) developing new and innovative ways of delivering services that advance the understanding of Aboriginal culture and heritage;

(viii) raising and promoting government and community awareness of Aboriginal culture and heritage;

(ix) provision and promotion of training and education relating to the delivery of tourism services, Aboriginal culture and heritage;

(x) act in a manner consistent with that of a Registered Charity; and

(xi) pursue purposes that are incidental or ancillary to, and in furtherance or in aid of, the foregoing objects and purposes.

(b) The Organisation has all the powers of an incorporated association set out in the Act.

(c) The Organisation may use its powers to do anything which it considers necessary or convenient for carrying out the Objects.

4. Assets and income of the Organisation

(a) The property and income of the Organisation shall be applied solely towards the promotion of the Objects or purposes of the Organisation and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to Members, except in good faith in the promotion of those Objects or purposes.

(b) A payment may be made (directly or indirectly) to a Member out of the funds of the Organisation only if it is authorised under clause 4(c).

(c) A payment to a Member out of the funds of the Organisation is authorised if it is:

(i) the payment in good faith to that Member of reasonable remuneration for services provided to the Organisation; or reasonable compensation for goods supplied to the Organisation in the ordinary course of business;

(ii) the payment of interest on money borrowed from a Member by the Organisation, at a rate not exceeding the cash rate published from time to time by the Reserve Bank of Australia;

(iii) the payment of reasonable rent to the Member for any premises leased by the Member to the Organisation; or

(iv) the reimbursement of reasonable expenses properly incurred by a Member on behalf of the Organisation.

5. Membership

5.1 Number of Members

The number of Members of the Organisation is unlimited.

5.2 Membership classes

The Members of the Organisation will consist of:

(a) ATB Members;

(b) Full Corporate Members; and

(c) Associate Members.

5.3 Membership requirements and undertaking

(a) Every Member must:

(i) meet the eligibility requirements in clause 5.5;

(ii) be approved for membership in accordance with clause 6.1; and

(iii) fulfil their obligations under this Constitution.

(b) Every Member undertakes to the best of their ability to:

(i) comply with this Constitution and any regulations, policies or standards of the Organisation in force from time to time; and

(ii) promote the Objects, interests and standing of the Organisation.

5.4 Liability of Members and undertaking

The liability of Members is limited.

5.5 Eligibility and membership rights

(a) ATB Members

(i) An Aboriginal Tourism Business will be an ATB Member upon application to the Organisation in writing pursuant to clause 6.1 to be an ATB Member and that application being accepted by the Organisation.

(ii) An ATB Member :

a) has the right to receive notices from the Organisation;

b) may attend all general meetings of the Organisation;

c) subject to the Board's discretion, may be appointed or have its Representative appointed, as applicable to any committee, working party or similar representative body of the Organisation or the Board, with or without a determinative vote;

d) may benefit from lobbying support by the Organisation on issues faced by the Aboriginal Tourism Business or the Aboriginal tourism industry as a

whole;

e) will receive invitations to attend any functions, seminars or other events held by the Organisation;

f) is entitled to discounts to the cost of attendance at all functions, seminars and other events held by the Organisation;

g) may be identified by the Organisation as an Aboriginal Tourism Business in all promotional and marketing material for a fee;

h) will receive regular newsletters in relation to Aboriginal tourism events and issues;

i) may represent the Organisation on industry committees and advisory groups;

j) may use the Organisation's logo in the conduct of its business activities; and will have any other rights and benefits that may be determined by the Board.

(iii) An ATB Member:

a) does not have the right to request the convening of or to vote at or be heard at general meetings of the Organisation;

b) does not have the right to be elected to, or hold office on the Board;

c) does not have the right to access any of the Organisation's business programs, or other programs undertaken by the Organisation from time to time.

(b) Full Corporate Members

(i) To be eligible as a Full Corporate Member, a person must:

a) be an ATB Member; and

b) pay the entrance fee, the first Annual Fee and any other fees payable in accordance with clause 6.1(f)(ii).

(ii) Except as set out below and as otherwise expressly provided in this Constitution, a Full Corporate Member has all the rights and benefits, and must comply with all the obligations, of ATB Members and in addition, has the right to (subject to clause 6.1):

a) attend, request the convening of, vote at and be heard at all general meetings of the Organisation;

b) subject to clause 10.6, be elected to, or hold office on the Board;

c) subject to the Board's discretion, be appointed or have its Representative appointed, as applicable to any committee, working party or similar representative body of the Organisation or the Board, with or without a determinative vote;

d) be identified by the Organisation as an Aboriginal Tourism Business in all promotional and marketing material for no fee;

e) be promoted by the Organisation at all international trade shows that the Organisation attends;

f) subject to clause 7(d) may access the Organisation's membership database; and

g) will have any other rights and benefits that may be determined by the Board.

(c) Associate Members

(i) To be eligible as an Associate Member, a person must pay the entrance fee, the first Annual Fee and any other fees payable in accordance with clause 6.1(f)(ii).

(ii) Subject to clause 6.1, an Associate Member:

a) has the right to receive notices from the Organisation;

b) may attend all general meetings of the Organisation;

c) does not have the right to request the convening of or to vote at or be heard at general meetings of the Organisation;

d) does not have the right to be elected to, or hold office on the Board;

e) subject to the Board's discretion, may be appointed or have its Representative appointed, as applicable to any committee, working party or similar representative body of the Organisation or the Board, with or without a determinative vote;

f) has the right to receive the benefit of lobbying support by the Organisation on issues faced by it or the Aboriginal tourism industry as a whole;

g) will receive invitations to attend any functions, seminars or other events held by the Organisation;

h) is entitled to discounts to the cost of attendance at all functions, seminars and other events held by the Organisation;

i) may be identified by the Organisation as a member of the Organisation in all promotional and marketing material for a fee;

j) will receive regular newsletters in relation to Aboriginal tourism events and issues;

k) may represent the Organisation on industry committees and advisory groups;

l) may use the Organisation's logo in the conduct of its business activities; and

m) will have any other rights and benefits that may be determined by the Board.

5.6 Representatives

(a) A Member that is an organisation must by notice in writing to the CEO appoint and remove a natural person to act as its Representative.

(b) A certificate executed by the appointing Member is rebuttable evidence of the appointment or removal (as applicable) of a Representative.

(c) Subject to this Constitution, a Representative is entitled to:

(i) exercise at a general meeting all the powers which its appointing Member could exercise if it were a natural person;

(ii) if its appointing Member is a Full Corporate Member, be counted towards a quorum on the basis that the Member will be deemed Present at a general meeting by its Representative; and

(iii) if eligible pursuant to the terms of this Constitution, be nominated as a Director of the Organisation.

(d) Where:

(i) a Representative's appointment has been revoked; and

(ii) the CEO has not received written notice of the revocation prior to a general meeting,

any vote given at the relevant meeting in accordance with the terms of instrument appointing the Representative is valid.

(e) If written notice of the appointment of a Representative has not been received in accordance with clause 5.6(a) the Chairperson of a general meeting may allow a Representative to vote on the condition that they subsequently establish their status as a Representative within a period prescribed by, and to the satisfaction of, the Chairperson of the general meeting.

6. Application for and cessation of membership

6.1 Application for ATB Member/Full Corporate Member/Associate Member membership

(a) Every application for membership as an ATB Member or a Full Corporate Member or an Associate Member of the Organisation must:

(i) be on a written form approved by the Board for that purpose and signed by the applicant;

(ii) include the applicant's name, address, occupation (if applicable) and proposed class of membership, including a statement as to the applicant's eligibility for membership (if applicable); and

(iii) be submitted to the CEO at the Office or in any other way approved by the Board from time to time.

(b) Within a reasonable period of receipt of a membership application to be an ATB Member, the Board will consider the application and;

(i) will assess the determine if the applicant is an Aboriginal Tourism Business; and provide reasons for its determination; and

(ii) may request that an applicant supply any evidence of eligibility that the Board considers reasonably necessary; and

(iii) if the applicant is determined to be an Aboriginal Tourism Business the application will be approved.

(c) Within a reasonable period of receipt of a membership application to be a Corporate Member or and Associate Member, the Board will consider the application and will, in its absolute discretion without having to provide reasons:

(i) approve or reject the applicant and (if applicable) determine the class of membership; or

(ii) decide to request that an applicant supply any evidence of eligibility that the Board considers reasonably necessary.

(d) An applicant will be admitted to membership of the Organisation:

(i) As an ATB Member, if a majority of the Directors entitled to vote at the meeting vote to accept that the applicant meets the criteria for being an ATB Member.

(ii) as a Full Corporate Member, if a majority of the Directors entitled to vote at the meeting vote to admit the applicant as a Full Corporate Member; and

(iii) as an Associate Member, if a majority of the Directors entitled to vote at the meeting vote to admit the applicant as an Associate Member.

(e) If the Board rejects a membership application, the CEO must, as soon as practicable, notify the applicant in writing that the application has been rejected. The CEO is not required to give any reasons as to why a membership application has been rejected.

(f) If the Board approves a membership application, the CEO must, as soon as practicable:

(i) notify the applicant in writing of the approval for membership and the class of membership; and

(ii) request payment of the applicant's entrance fee (if any), all or part of the Annual Fee (as determined by the Board) and any special fee within 14 days after the date the applicant is notified of acceptance.

(g) The CEO must, within 30 days after a membership application is approved by the Board, enter the applicant's name in the Register in accordance with clause 7.

6.2 Membership fees

(a) The entrance fee for membership and the Annual Fee payable by Full Corporate Members and Associate Members will be determined by the Board from time to time.

(b) Except for the first Annual Fee payable by a new Full Corporate Member or Associate Member (as applicable) in accordance with clause 6.1(f)(ii), all Annual Fees are due and payable in advance on 1 July each year or as otherwise determined by the Board from time to time.

6.3 Failure to pay membership fees

(a) If any amount owing under clause 6.2 remains unpaid for a period of 90 days after it falls due, the CEO will send a notice to the Member requiring payment of the outstanding amount within 14 days of the date of the notice.

(b) If the amount is not paid within this 14 day period then the:

(i) a Full Corporate Member will, at the end of the period, automatically and without further notice cease to be a Full Corporate Member, but shall remain an ATB Member provided that it is an Aboriginal Tourism Business;

(ii) an Associate Member will, at the end of the period, automatically and without further notice cease to be an Associate Member.

(c) The Board may, in its absolute discretion, reinstate the Member on payment of all arrears of amounts owing under clause 6.2.

6.4 No transfer of membership

A right, privilege or obligation of a person by reason of membership:

(a) is not capable of being transferred or transmitted to another person; and

(b) terminates upon the cessation of membership.

6.5 Cessation of membership

(a) A Member will cease to be a Member:

(i) if the Member resigns by notice in writing to the CEO, on the date that the notice is received by the CEO;

(ii) if their membership is cancelled in accordance with clause 6.3;

(iii) if, in the Board's reasonable opinion, either:

a) the Member's status or conduct renders it undesirable that the Member continue to be a Member, including if the Member brings the reputation of the Organisation into disrepute; or

b) the Member no longer meets the applicable criteria for membership in clause 5.5;

and both of the following requirements are met:

c) a majority of the Directors entitled to vote at a Board meeting vote in favour of terminating the membership of the Member; and

d) the Member has been given at least 21 days notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed; or

(iv) where the Member is an individual, if the Member:

a) dies; or

b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

(v) where the Member is an organisation, if it is deregistered or otherwise ceases to be an organisation; or

(vi) if the Member is the subject of an Insolvency Event.

(b) Any Member ceasing to be a Member:

(i) will have its name removed from the Register;

(ii) is not be entitled to any refund (or part refund) of any Annual Fee or other fee already paid; and

(iii) will remain liable for and must pay to the Organisation all fees and any other amounts which were due to the Organisation at the date of ceasing to be a Member.

7. Register of Members

(a) The CEO on behalf of the Organisation must keep and maintain a Register containing:

(i) the name and postal, residential and email address provided by each Member;

(ii) the class of membership of each Member;

(iii) the date on which each Member's name was entered into the Register; and

(iv) the name and date of appointment of each Representative.

(b) The Register is available for inspection free of charge by any Member upon request.

(c) A Member may make a copy of entries in the Register or take an extract from the Register but shall have no right to remove the Register for that purpose. The Board may in its discretion require the Member to provide a statutory declaration setting out the purpose of the request and declaring that the purpose is connected with the affairs of the Organisation.

(d) A Member must not use or disclose any information in the Register for any purpose other than a purpose that:

(i) is directly connected with the affairs of the Organisation; or

(ii) relates to the administration of the Act.

8. General meetings

8.1 Annual general meetings

(a) The Organisation must hold an annual general meeting once in each calendar year and no later than 6 months after the end of each Financial Year.

(b) The annual general meeting must be held at the place that the Board sets for the meeting.

8.2 Business at annual general meeting

The business of an annual general meeting is to:

(a) confirm the minutes of the last preceding annual general meeting and of any other general meeting held since the last annual general meeting;

(b) consider the annual report of the Organisation;

(c) consider:

(i) if the Organisation is a tier 1 association, the Financial Statements of the Organisation for the preceding Financial Year, presented under Part 5 of the Act;

(ii) if the Organisation is a tier 2 association or tier 3 association, the Financial Report of the Organisation for the preceding Financial Year, presented under Part 5 of the Act; and

(iii) if required to be presented for consideration under Part 5 of the Act, a copy of the report of the review or the auditor's report on the Financial Statements or Financial Report (as applicable);

(d) elect Directors;

(e) (where relevant) appoint the auditor and fix the remuneration of the auditor; and

(f) transact any other business which under this Constitution or the Act may properly be brought before the meeting.

8.3 Power of Directors to convene general meeting

(a) The Board may convene a general meeting of the Organisation's Members whenever it thinks fit, at any place it thinks fit.

(b) The Board must convene a general meeting of Members, upon the written request of a group of Full Corporate Members comprising at least 20% of all Full Corporate Members.

(c) Subject to the Act, the Board may cancel or postpone any general meeting or change its venue by giving notice to all persons to whom the notice of the original meeting was given, but may not cancel a general meeting which was called or requested by persons other than the Directors, without the prior written consent of those persons.

8.4 Power of Full Corporate Members to convene a general meeting

(a) A group of Full Corporate Members comprising at least 20% of all Full Corporate Members may call, and arrange to hold, a general meeting.

(b) As far as reasonably practicable, a general meeting under this clause 8.4 must be called in the same way in which general meetings of the Organisation are called.

(c) The Full Corporate Members calling the general meeting must pay the expenses of calling and holding it under this clause 8.4.

8.5 Members' resolutions at a general meeting

(a) A group of Members comprising at least 15 Full Corporate Members may give the Organisation notice of a resolution they propose to move at a general meeting.

(b) The notice under clause 8.5(a) must:

(i) be in writing;

(ii) set out the wording of the proposed resolution; and

(iii) be signed by the Full Corporate Members proposing to move the resolution.

(c) If the Organisation has been given notice of a Members' resolution under clause 8.5(a), the resolution must be considered at the next general meeting of the Organisation that occurs no more than 2 months after the notice is given.

8.6 Notice of general meetings

(a) Written notice of a general meeting must be given in accordance with this Constitution to:

(i) every Member;

(ii) every Director; and

(iii) the auditor or reviewer (if any).

(b) A Postal Vote Form prepared in accordance with clause 9.8 must be sent to all Full Corporate Members entitled to vote on any resolutions at the general meeting, together with the notice of general meeting.

(c) Notice of general meetings (including annual general meetings) must be provided to Members at least 21 clear days before the meeting is to be held.

(d) Subject to the Act and clause 8.6(e), the Organisation may call, on shorter notice than that specified in clause 8.6(c):

(i) an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree prior to the annual general meeting; and

(ii) any other general meeting, if Members holding at least 95% of the votes that may be cast at the general meeting agree prior to the general meeting.

(e) The Organisation cannot call a general meeting or annual general meeting on shorter notice than that specified in clause 8.6(c) if a resolution will be moved at the meeting to:

(i) appoint or remove a Director; or

(ii) remove an auditor or reviewer.

(f) Subject to the Act, the Organisation may give notices to Members electronically, by notifying the Member:

(i) that the notice is available; and

(ii) how the Member may use electronic means to access the notice,

by any electronic means permitted by the Act and to an electronic address nominated by the relevant Member for the purpose of receiving notices.

8.7 Content of notice of general meetings

A notice of a general meeting must:

(a) specify the place, date and time for the general meeting (and, if the meeting is to be held in 2 or more places in accordance with clause 8.9, the technology that will be used to facilitate this);

(b) state the general nature of the business to be transacted at the general meeting;

(c) (if a Special Resolution is to be proposed at the general meeting) set out an intention to propose the Special Resolution and state the resolution; and

(d) contain a statement of each Full Corporate Member's right to submit a Postal Vote.

8.8 Failure to give notice

Any resolution passed at a general meeting is not invalidated by:

(a) the accidental omission to give notice of a general meeting to any Member or non-receipt of that notice by a Member; or

(b) the accidental omission to send out the Postal Vote Form to a person entitled to receive notice or non-receipt of that instrument.

8.9 Use of technology

(a) The Organisation may hold a general meeting (including an annual general meeting) at a time determined by the Directors.

(i) at one or more physical venues;

(ii) at one or more physical venues and using virtual meeting technology; and

(iii) using virtual meeting technology only, provided that, in each case, Members as a whole are given a reasonable opportunity to participate in the meeting, and otherwise in the manner determined by the Directors.

(b) The general meeting is taken to be held where the Chairperson of the general meeting conducts the general meeting. All proceedings conducted in accordance with this clause 8.9 are as valid as if conducted at a single gathering of a quorum of those entitled to be present.

(c) Members attending at a venue using any technology that gives Members a reasonable opportunity to participate are deemed to be present at the meeting provided that:

(i) the use of technology is permitted either by the person presiding as chair of the meeting or by a resolution of those Members physically present; and

(ii) the participation of the Member in the general meeting must be made known to all other Members.

(d) A Member who participates in a meeting as set out in 8.9(a) and 8.9(c):

(i) is deemed to be present at the General Meeting; and

(ii) continues to be present at the General Meeting for the purposes of establishing a quorum, until the Member notifies the other Members that he or she is no longer taking part in the General Meeting.

8.10 Quorum

(a) No business may be transacted at a general meeting unless a quorum of Members is Present at the time when the meeting proceeds to business.

(b) Except as otherwise provided in this Constitution, a quorum constitutes 5 Full Corporate Members Present.

8.11 If a quorum not Present

If a quorum is not Present within 30 minutes after the time appointed for the general meeting in the notice:

(a) where the meeting is convened on the requisition of Full Corporate Members, the meeting must be automatically dissolved (subject to clause 8.14(a)); and

(b) in any other case:

(i) the meeting stands adjourned to a day and at a time and place as the Board decides or, if no decision is made by the Board, to the same day in the next week at the same time and place; and

(ii) if no quorum is Present at the resumed meeting within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

8.12 Chairperson of general meeting

(a) Subject to clause 8.12(b), the Chairperson must preside as chair at every general meeting.

(b) If the Chairperson is not present within 30 minutes after the time appointed for the meeting or is unwilling to act as chair:

(i) the Vice-Chairperson must chair the meeting; or

(ii) if the Vice-Chairperson is not present within 30 minutes after the time appointed for the meeting or is unwilling to act as chair:

a) the Directors present must elect a Director (other than a Co-Opted Director) to chair the meeting; or

b) if none of the Directors present wish to act, or in the absence of all Directors, the Full Corporate Members Present must elect one of their number to chair the meeting.

(c) Where a person is appointed to chair a meeting under clause 8.12(b), in relation to that meeting, references to the Chairperson in this Constitution include a reference to that person.

8.13 Right of officers and advisers to attend general meeting

(a) The CEO is entitled to be present and, at the request of the Chairperson of the general meeting, to speak at any general meeting of the Organisation.

(b) Any other person (whether a Member or not) required by the Board to attend any general meeting is entitled to be present and, at the request of the Chairperson of the general meeting, to speak at that general meeting.

8.14 Adjournments

(a) The Chairperson may, and must if directed to do so by the general meeting, adjourn a general meeting from time to time and from place to place.

(b) Only business left unfinished at the meeting which was adjourned may be transacted at a meeting resumed after an adjournment.

(c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was in fact passed.

(d) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of the original meeting. In all other cases it is not necessary to give notice of the adjourned meeting.

8.15 Written resolutions of Members

(a) A resolution may be passed without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

(b) Identical copies of the document may be distributed for signing by different Full Corporate Members and taken together will constitute the same document.

(c) The resolution is passed when the last Full Corporate Member signs the document and satisfies any requirement in this Constitution or the Act that the resolution be passed at a general meeting.

9. Voting at general meetings

9.1 Voting rights

(a) Each Full Corporate Member has 1 vote on each resolution.

(b) Each Full Corporate Member that is entitled to attend a general meeting and vote on a resolution may cast its vote on that resolution:

(i) personally, or by their attorney or Representative, by attending the annual general meeting; or

(ii) by returning a Postal Vote Form in accordance with clause 9.8 (**Postal Vote**).

(c) A Member ordinarily entitled to vote is not entitled to vote if his or her Annual Fee is more than 3 months in arrears at the commencement of the relevant general meeting.

9.2 Members' resolutions

(a) Except where by law a resolution is required to be a Special Resolution, a resolution put to the vote at a general meeting will be an Ordinary Resolution of Full Corporate Members entitled to vote in accordance with clause 9.1.

(b) A resolution put to the vote at a general meeting must be decided on a show of hands and on a calculation of the Postal Votes unless a poll is demanded in accordance with clause 9.3.

(c) Before a vote is taken, the Chairperson must inform the general meeting whether any Postal Votes have been received and how the Postal Votes are to be cast on the resolution.

(d) A declaration by the Chairperson that a resolution has on a show of hands and Postal Votes been carried or lost and an entry to that effect in the minutes of the meeting is conclusive evidence of that fact. Neither the Chairperson nor the minutes of the meeting need to state the number or proportion of the votes recorded in favour of or against the resolution.

9.3 Voting by poll

(a) A poll may be demanded by:

(i) the Chairperson; or

(ii) at least 5 Full Corporate Members Present entitled to vote on the resolution.

(b) A poll may be demanded:

(i) before a vote is taken; or

(ii) before or immediately after the voting results are declared.

(c) The demand for a poll may be withdrawn.

(d) Subject to clause 9.3(e), if a poll is demanded, it is to be taken in the manner and at the time the Chairperson directs.

(e) A poll demanded on the election of a Chairperson or on a question of adjournment must be taken immediately.

(f) The result of the poll will determine whether the resolution on which the poll was demanded is carried or lost.

(g) The demand for a poll does not prevent a general meeting from proceeding with any other business.

9.4 Chairperson's casting vote

Subject to the Act, in the case of an equality of votes on a show of hands and the calculation of the Postal Votes or on a poll, the Chairperson of the relevant general meeting has a casting vote, in addition to any vote that the Chairperson may otherwise be entitled.

9.5 Members of unsound mind and minors

(a) If a Member is:

(i) of unsound mind;

(ii) a person whose person or estate is liable to be dealt with in any way under the Law relating to mental health; or

(iii) a minor,

the Member's committee or trustee or any other person who has proper management or guardianship of the Member's estate or affairs may, subject to clause 9.5(b), exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.

(b) Any person with powers of management or guardianship cannot exercise any rights under clause 9.5(a) unless the person has provided the Board with satisfactory evidence of their appointment and status.

9.6 Objection to qualification to vote

(a) An objection to a person's right to vote at a general meeting:

(i) may only be raised at the general meeting or adjourned meeting at which the vote objected to is tendered; and

(ii) must be determined by the Chairperson of the meeting, whose decision is final.

(b) A vote allowed after an objection is valid for all purposes.

9.7 Votes counted in error

If any vote is counted which ought not to have been counted or might have been rejected, the error will not invalidate the resolution unless the error is:

(a) detected at the same general meeting; and

(b) of sufficient magnitude, in the opinion of the Chairperson, as to invalidate the resolution.

9.8 Postal Vote

(a) A Full Corporate Member who is entitled to attend and vote at a general meeting may vote on each resolution at the general meeting by submitting a Postal Vote.

(b) The Postal Vote Form must:

(i) set out the terms of the proposed resolution(s);

(ii) provide for the Full Corporate Member to vote for or against each resolution and may provide for an abstention to be indicated;

(iii) specify the method and place for returning the Postal Vote; and

(iv) set out the closing date of the Postal Vote but shall otherwise be in a form specified by the Board from time to time.

(c) To be valid, a Postal Vote must be on a Postal Vote Form which must:

(i) be duly completed and signed by the Full Corporate Member or by its duly authorised attorney or Representative;

(ii) be received:

a) by the method specified in the notice of meeting (which may include by electronic means) for returning the Postal Vote Form; and

b) at the Office (or any other place specified in the notice of meeting) no later than 48 hours before the time of the relevant general meeting (or such shorter period as the Board may permit, subject to the Act); and

(iii) If the Postal Vote Form was signed by an attorney, a copy of the power of attorney certified as a true copy by statutory declaration must be sent with the Postal Vote Form, unless it has already been sent to the Organisation.

(d) If a Postal Vote Form is not completed in accordance with this clause or is not returned by the latest time and date in accordance with this clause the vote recorded on that Postal Vote Form will be invalid and will not be counted in the resolution.

9.9 Voting at meetings by use of technology

A vote may be cast by use of technology where a general meeting is held in accordance with clause 8.9.

10. Board of Directors

10.1 Number of Directors

(a) The Organisation must have at least 5 Directors and no more than 10 Directors in office at all times.

(b) The Organisation in general meeting may by Ordinary Resolution alter the number of Directors, provided that the minimum number is not reduced below 5.

10.2 Board positions

(a) The Board will comprise:

(i) five Regional Directors elected by Full Corporate Members, referred to in clause 10.2(b);

(ii) up to three Ordinary Directors elected by Full Corporate Members, referred to in clause 10.2(c); and

(iii) Directors appointed by the Board, being:

a) up to two Co-opted Directors appointed by the Board under clause 10.2(d); and

b) any Directors appointed by the Board under clause 10.2(e).

(b) The Board must include the following Regional Directors, each of whom must reside in or have a business interest in the specific region they represent, and are elected by Full Corporate Members in accordance with clause 10.5:

(i) 1 Director representing Destination Perth region;

(ii) 1 Director representing the South West region of Western Australia;

(iii) 1 Director representing the North West region of Western Australia;

(iv) 1 Director representing the Golden Outback region of Western Australia; and

(v) 1 Director representing the Coral Coast region of Western Australia.

together, the **Regional Directors**.

(c) The Board may include up to three additional Directors, elected by Full Corporate Members in accordance with clause 10.5 (**Ordinary Directors**).

(d) The Board may appoint up to two other Directors that need not be a Member, based on their geographical region, on their skill and expertise or any other basis, at its discretion (**Co-Opted Directors**). The Term of a Co-Opted Director is determined by the Board.

(e) The Board may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the number of existing Directors, provided the total number of Directors does not exceed the maximum number specified in clause 10.1(a).

10.3 Term and eligibility for re-election

(a) The term of office applicable to each category of Director is:

(i) Regional Director and Ordinary Director: (subject to clause 10.3(c)) three years, or the third annual general meeting following the Regional Director's election, whichever is the longer.

(ii) Co-opted Director: will hold office until such time that the Board (other than the Co-Opted Director) resolves to terminate that Co-Opted Director's appointment.

(iii) Director appointed under clause 10.2(e): until the end of the next annual general meeting following his or her appointment, following which they are eligible for election as a Regional Director or Ordinary Director, subject to this Constitution.

(b) Regional Directors and Ordinary Directors are eligible to serve two consecutive terms. Subject to clause 10.3(c), they are not eligible to submit for re-election for a third consecutive term, but are eligible to stand for election in the future, once at least one year has elapsed since their retirement.

(c) If a Regional Director or Ordinary Director's term is due to end at an annual general meeting and no nominations are received to fill that position on the Board, the Board in its discretion may resolve to extend that Director's term until the next annual general meeting (or any shorter period).

10.4 Director qualifications

(a) Apart from Co-Opted Directors appointed by the Board pursuant to clause 10.2(d), all Directors at the time of their election must:

(i) have been a Full Corporate Member in the 12 month period prior to the date of nomination; and

(ii) paid all Annual Fees due and owing by it to the Organisation in accordance with clause 6.2(b).

(b) The Board in its discretion will determine if a person is eligible to act as a Regional Director for the relevant region.

(c) A proposed Director must ensure that they not disqualified from being a Director under sections 39 and 40 of the Act before being appointed as a Director. The Board may require a proposed Director to confirm his or her eligibility to act as Director prior to his or her appointment.

(d) A person must give the Organisation a signed written consent to act as a Director before being appointed as a Director.

10.5 Election of Directors at annual general meeting

(a) At each annual general meeting, the person or persons (if any) standing for election as Director will be, as applicable:

(i) any person standing for election as a Regional Director or Ordinary Director; and

(ii) any Regional Director or Ordinary Director whose term has expired and who stands for re-election in accordance with this Constitution.

(b) If only one person has nominated for a position on the Board in accordance with this Constitution, the Chairperson must declare that person elected to the position, without requiring a vote on the election.

(c) If more than one person has nominated for a position on the Board in accordance with this Constitution, the Full Corporate Members must vote to elect one of the nominees in accordance with clause 9.

(d) A Full Corporate Member who has nominated for a position may vote for themselves.

10.6 Nomination of Directors

(a) Any person nominated for a position on the Board must be eligible in accordance with clause 10.3(b) (where applicable) and qualified in accordance with clause 10.4.

(b) A Member who has been a Full Corporate Member since the previous 1 July may nominate a person who satisfies clause 10.6(a) for a position on the Board which is to be filled at the next annual general meeting.

(c) A Full Corporate Member who satisfies clause 10.6(a) may nominate themselves or its Representative (as applicable) for a position on the Board which is to be filled at the next annual general meeting.

(d) A nomination must be in writing, signed by the nominator and be submitted to the CEO at the Office at least 40 days before the annual general meeting at which the election is to take place.

10.7 Vacation of office of Director

In addition to the circumstances in which the office of a Director becomes vacant:

(a) under the Act;

(b) because of a resolution under clause 10.8; or

(c) under clause 10.3;

the office of a Director becomes vacant if the Director:

(d) (except in the case of a Co-Opted Director) is no longer a Full Corporate Member;

(e) becomes physically or mentally incapable of performing the Director's duties and the Board resolves that his or her office be vacated for that reason;

(f) is the subject of an Insolvency Event;

(g) resigns by notice in writing to the Organisation;

(h) dies;

(i) is absent from 3 meetings of the Board in any 12 month period without special leave of absence from the Board and the Board resolves that his or her office be vacated;

(j) subject to clause 11.8, without the prior or subsequent consent of the other Directors, is directly or indirectly interested in any contract or proposed contract with the Organisation and fails to declare the nature of the Director's interest as required by the Act; or

(k) is or becomes ineligible to act as Director under sections 39 and 40 of the Act and does not have the Commissioner's leave to act as Director under section 39(2) of the Act.

10.8 Removal of Directors

Subject to the Act, the Organisation may by resolution remove a Director from office.

10.9 Remuneration and payments to Directors

(a) No payment will be made to any Director other than a payment allowed under clauses 10.9(b) and 10.9(c).

(b) Payments made by the Organisation or any entity under its control to any executive Director, the Chairperson or the Vice-Chairperson:

(i) must be authorised by an Ordinary Resolution of Members;

(ii) and:

a) in the case of remuneration, will be calculated on a commercial basis and fixed by the Board from time to time but must not be a distribution of, commission on, or a percentage of, profits or operating revenue; or

b) for services rendered in a professional or technical capacity, must be for commercially reasonable amounts.

(c) Nothing in this Constitution prevents the Organisation from making a payment approved by the Board:

(i) for out-of-pocket expenses properly incurred by a Director in attending meetings of the Board, general meetings and committee meetings and otherwise performing their duties as a Director;

(ii) to any executive Directors, or the Chairperson or the Vice-Chairperson in accordance with clause 10.9(b); and

(iii) in respect of the indemnification of, or payment of premiums on contracts of insurance for, any Director, in accordance with clause 19.

11. Powers and duties of Directors

11.1 General management power

(a) Subject to the Act and this Constitution, the Directors are responsible for managing the business of the Organisation and may exercise all powers of the Organisation which are not required to be exercised by the Organisation in a general meeting by the Act or this Constitution.

(b) Without limiting clause 11.1(a), the Board may exercise all the powers of the Organisation to:

(i) borrow or raise money;

(ii) grant security over any property or business of the Organisation or all or any of its uncalled capital;

(iii) pay interest on any debt due by the Organisation; and

(iv) issue debentures or give any other security for a debt, liability or obligation of the Organisation or of any other person.

11.2 Appointment of attorneys and representatives

(a) The Board may, by power of attorney or by general or specific appointment, appoint any person or persons to be an attorney or representative of the Organisation with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board), for such period and subject to such conditions as they think fit.

(b) An appointment under clause 11.2(a) may be made on terms for the protection and convenience of persons dealing with the attorney or representative as the Board think fit and may also authorise the attorney or representative to delegate all or any of the powers, authorities and discretions vested in the attorney or representative.

11.3 Committees

(a) The Board may create a committee or committees consisting of any number of Directors, Members or other persons (including, without limitation, employees or volunteers of the Organisation) as they think fit.

(b) The Board may delegate any of their powers to a committee. In that case:

(i) the committee must exercise those powers in accordance with any direction of the Board; and

(ii) a power exercised in accordance with clause 11.3(b)(i) is taken to be exercised by the Board.

(c) If the Board does not delegate any of its powers to a committee, that committee will act as an advisory committee only.

(d) Clauses 12.1, 12.2, 12.4 and 12.5 apply to any committee as if each reference in those clauses to the Board was a reference to the members of the committee and each reference to a meeting of Board were to a meeting of the committee.

(e) Minutes of all the proceedings and decisions of every committee must be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act to be made, entered and signed.

11.4 Observers

The Board may appoint any person or persons with skill and expertise in certain matters to attend meetings of the Board in an observing capacity, and if requested by the Board, to advise and make recommendations to the Board.

11.5 Negotiable instruments and electronic payments

(a) All negotiable instruments of the Organisation are to be executed by the persons and in the manner determined by the Board from time to time.

(b) All electronic payments by the Organisation are to be made or authorised in the manner determined by the Board from time to time.

11.6 By-laws

(a) The Board has the power to make by-laws regulating the establishment, organisation and conduct of the Organisation and its committees, provided such by-laws are not inconsistent with this Constitution or the Act.

(b) All by-laws made and in force from time to time are binding on Members.

11.7 Acts of Directors valid despite defective appointment

Any act done at any meeting of the Board or of a committee of Directors by any person acting as a Director is, although it is later discovered that there was some defect in the appointment of any such Director or that the Director was disqualified, is valid as if the Director had been duly appointed and was qualified to be a Director or to be a member of the committee.

11.8 Interested Directors

(a) A Director:

(i) may hold another position (except as auditor) in the Organisation or any related body corporate on terms as to remuneration, tenure and otherwise that the Board thinks fit;

(ii) may be employed by the Organisation or act in a professional or technical capacity (except as auditor) on behalf of the Organisation;

(iii) is not disqualified, merely because he or she is a Director, from contracting with the Organisation in any respect including, but not limited to:

a) selling property to, or purchasing property from, the Organisation;

b) lending money to the Organisation with or without interest or security;

c) guaranteeing the repayment of money borrowed by the Organisation for a commission or profit; or

d) underwriting or guaranteeing the subscription for securities in any related body corporate or other body corporate promoted by the Organisation or in which the Organisation is interested as a shareholder or otherwise, for a commission or profit,

provided that any Director having a direct or indirect pecuniary interest in a contract, or proposed contract, made by, or in contemplation of, the Board shall, as soon as becoming aware of that interest, disclose the nature and extent of the interest to the Board in accordance with clause 11.8(d).

(b) The Board may exercise the voting rights conferred by shares in any body corporate held or owned by the Organisation in the manner that they think fit.

(c) A contract or arrangement made by the Organisation with a Director or in which a Director is in any way directly or indirectly interested may not be avoided merely because the Director is a party to or interested in it provided that any Director having a direct or indirect pecuniary interest in a contract, or proposed contract, made by, or in contemplation of, the Board shall, as soon as becoming aware of that interest, disclose the nature and extent of the interest to the Board in accordance with clause 11.8(d).

(d) A Director who has a material personal interest in a matter which is or will be considered at a Board meeting must:

(i) as soon as the Director becomes aware of the interest, disclose at the relevant Board meeting the nature and extent of the interest and how the interest relates to the activity of the Organisation;

(ii) not be present while the matter is being considered at the Board meeting or vote on the matter; and

(iii) ensure the nature and extent of the interest and how the interest relates to the activity of the Organisation is disclosed at the next General Meeting.

(e) Clause 11.8(d) does not apply to any material personal interest that exists only because the Director:

(i) is an employee of the Organisation;

(ii) is a member of a class of persons for whose benefit the Organisation is established; or

(iii) that the Director has in common with all, or a substantial proportion of, the Members.

(f) The Board may make regulations requiring the disclosure of interests that a Director, and any person considered by the Board as related to or associated with the Director, may have in any matter concerning the Organisation. Any regulations made under this Constitution bind all Directors.

12. Proceedings of the Board

12.1 Calling and holding Board meetings

(a) The Board or a Director may call a Board meeting by giving reasonable notice to each Director.

(b) The Board may adjourn and otherwise regulate their meetings as they think fit.

12.2 Meetings by telecommunications

Without limiting the power of the Board to regulate its meetings as it thinks fit, the Board may hold a valid meeting using any medium by which each of the Directors can simultaneously hear all the other participants (including telephone, video conferencing or any other means of instant communication), and in that case:

(a) the participating Directors are taken to be present at the meeting for the purposes of this Constitution;

(b) the meeting is taken to be held where the Chairperson of the meeting is;

(c) if a failure in communications prevents any Director present at the meeting from participating in the meeting, then the meeting will be suspended until communications are restored, unless communications cannot be restored within 30 minutes, in which case the meeting will be deemed to have terminated; and

(d) all proceedings of the Directors conducted in accordance with this clause 12.2 are as valid and effective as if conducted at a meeting at which all of them were present in person

12.3 Quorum

(a) At a meeting of the Board, the number of Directors whose presence is necessary to constitute a quorum is 5 Directors.

(b) If the office of a Director becomes vacant, the remaining Directors may act but, if the total number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board, the Directors may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or for the purpose of convening a general meeting of the Organisation.

12.4 Chairperson and Vice-Chairperson

(a) The Board must elect a Director (other than a Co-Opted Director) to chair Director's meetings (**Chairperson**) and may decide the period during which the Chairperson is to hold that office.

(b) The Board must elect a Director (other than a Co-Opted Director) as the Vice-Chairperson and may decide the period during which the Vice-Chairperson is to hold that office.

(c) Where a meeting of the Board is held and:

(i) a Chairperson has not been elected; or

(ii) the Chairperson declines to act or is not present within 30 minutes after the time appointed for the holding of the meeting,

the Vice-Chairperson shall chair the meeting.

(d) If a meeting of the Board is held and:

(i) a Chairperson and a Vice-Chairperson have not been elected; or

(ii) both the Chairperson and the Vice-Chairperson decline to act or are not present within 30 minutes after the time appointed for the holding of the meeting,

the Directors present must elect one of their number to chair the meeting.

(e) Where the Vice Chairperson is appointed to chair a meeting under clause 12.4(c) or a person is appointed to chair a meeting under clause 12.4(d), in relation to that meeting, references to the Chairperson in this Constitution include a reference to that person.

12.5 Board resolutions

(a) Subject to this Constitution, a resolution of the Board must be passed by a majority of the votes of Directors present and entitled to vote on the resolution.

(b) In the case of an equality of votes, the Chairperson has a second or casting vote in addition to his or her deliberative vote (if any).

12.6 Acts of Directors valid despite defective appointment

Any act done at any meeting of the Directors or of a committee of Directors by any person acting as a Director is, although it is later discovered that there was some defect in the appointment of any such Director or that the Director was disqualified, is valid as if the Director had been duly appointed and was qualified to be a Director or to be a member of the committee.

12.7 Minutes

(a) The Board must cause minutes to be made of:

(i) proceedings and resolutions of general meetings of Members and resolutions passed by Members without a meeting;

(ii) all appointments of Directors and officers;

(iii) all orders made by the Directors;

(iv) proceedings and resolutions of Board meetings and resolutions passed by Directors without a meeting,

and retain the minutes in a minute book for a period of at least 10 years or such other period as may be required under the Act.

(b) The Organisation must ensure that minutes are signed within a reasonable time after the date of the meeting or of the resolution being passed by:

(i) the Chairperson of the meeting; or

(ii) the Chairperson of the next meeting; or

(iii) in the case of a resolution without a meeting, a Director.

(c) In the absence of evidence to the contrary, contents of the minute book that is recorded and signed in accordance with this clause 12.7 is evidence of the matters shown in the minute.

12.8 Written resolutions of Directors

(a) The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

(b) Identical copies of the document may be distributed for signing by different Directors and taken together will constitute the same document.

(c) The resolution is passed when the last Director signs the document.

(d) Where a committee consists of one Director only, a document signed by that Director and recording a decision of the committee is valid and effective as if it were a decision made at a meeting of that committee and that document constitutes a minute of that decision.

13. CEO

13.1 Appointment of CEO

(a) The CEO holds office on the terms and conditions, as to remuneration and otherwise, as the Board decides.

(b) The CEO is not required to be a Representative or a Member and must not be a Director.

13.2 CEO's role

The CEO's responsibilities include:

(a) employing such staff that may be necessary to assist the CEO in operating the Organisation on terms and conditions approved by the Board;

(b) acting as, and performing all duties incidental to the office of the Public Officer of the Organisation in compliance with all applicable law;

(c) ensuring that all notices are duly given in accordance with the provisions of this Constitution or as required by law;

(d) attending and taking part in all meetings of the Board and Members unless the Board determines otherwise;

(e) identifying any issues within the Organisation requiring the Board's attention at Board meetings;

(f) keeping the minutes of the meetings of the Board and the Members in one or more books provided for that purpose;

(g) keeping proper records of the Organisation in accordance with the requirements of the Act;

(h) advising the Board as to the best means of administering and promoting the affairs of the Organisation;

(i) supervising the day to day running of the Organisation in compliance with all directions given by the Board from time to time;

(j) coordinating all correspondence relating to the Organisation, the Board and the Members;

(k) being the returning officer for Board elections and business, unless otherwise determined by the Board;

(l) keeping and maintaining in an up to date condition, the Constitution, and upon request by a Member, shall make available the Constitution for inspection by the Member;

(m) maintaining a record of the names and residential or postal addresses of the persons who hold the offices of the Organisation, including all Directors and persons who are authorised to use the common seal of the Organisation;

(n) maintaining a record of the names and residential or postal addresses of any persons who are appointed or act as trustees on behalf of the Organisation;

(o) complying with and fulfilling the duties of the CEO as specified by the Board in the CEO's duty statement, and as provided by the Board to the CEO upon appointment (as amended from time to time); and

(p) generally performing all duties incidental to the office of secretary of an incorporated association and such other duties as may be assigned to him or her by the Board from time to time.

13.3 CEO's responsibilities regarding control of funds

The CEO must:

(a) be responsible for the receipt of all monies paid to or received by, or by him or her on behalf of, the Organisation, and must issue receipts for those monies in the name of the Organisation;

(b) pay all monies referred to in clause 13.3(a) into such account or accounts of the Organisation as the Board may from time to time direct;

(c) make payments from the funds of the Organisation with the authority of a general meeting or of the Board and in doing so, ensure that all cheques are signed by themselves and at least one authorised Director; by any two others as are authorised by the Board or as otherwise agreed by the Board;

(d) comply on behalf of the Organisation with Part 5 of the Act with respect to the Financial Records of the Organisation by:

(i) keeping such Financial Records as correctly record and explain the financial transactions and financial position and performance of the Organisation;

(ii) keeping the Organisation's Financial Records in such manner as will enable true and fair Financial Statements of the Organisation to be prepared from time to time;

(iii) keeping the Organisation's Financial Records in such manner as will enable true and fair Financial Statements of the Organisation to be conveniently and properly audited;

(iv) coordinating the preparation of the Association's Financial Report or Financial Statements in accordance with the applicable requirements of Part 5 of the Act;

(v) where a review or audit of the Association's Financial Report or Financial Statements is required, providing any assistance required by the auditor or reviewer;

(vi) submitting to Members at each annual general meeting of the Organisation:

a) the Organisation's Financial Statements or Financial Report (as applicable) for the immediately preceding Financial Year; and

b) if required to be presented for consideration under Part 5 of the Act, a copy of the report of the review or the auditor's report on the Organisation's Financial Statements or Financial Report (as applicable);

(e) whenever so directed to do so by the Chairperson, submit to the Board a report, balance sheet or Financial Statement in accordance with that direction; and

(f) unless the Members resolve otherwise at a general meeting, have custody of all securities, books and documents of a financial nature and Financial Records of the Organisation, including those referred to in clause 13.3(d) and 13.3(e).

14. Seal

14.1 Safe custody

The Board must provide for the safe custody of the Organisation's seal.

14.2 Authority to use

The seal must only be used by the authority of the Board, or of a committee of the Board authorised by the Board to authorise the use of the seal.

14.3 Seal register

(a) The CEO must record details of every document to which the seal, if any, is fixed in a seal register.

(b) The seal register must be produced at each Board meeting for the purpose of the Board approving the fixing of the seal to each document recorded in the seal register since the last Board meeting.

15. Execution of documents

15.1 Execution generally

The Organisation may validly execute a document (including a deed) if the document is signed by a Director and countersigned by another Director, the CEO or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

15.2 Execution by authorised persons

Clause 15.1 does not limit the ability of the Board to authorise a person who is not an officer of the Organisation to execute a document for and on behalf of the Organisation.

16. Notices

16.1 How notice to be given

The Organisation may give a notice to any Member by:

(a) serving it on the Member personally;

(b) sending it by post to the Member's address as shown in the Register or an alternative address (if any) supplied by the Member to the Organisation for the purpose of giving notices;

(c) giving it to a Member's Representative in any manner contemplated by this clause 16.1, where the Member has by written notice to the CEO required that all notices to be given to the Member be given to its Representative;

(d) sending it by facsimile to the facsimile number (if any) nominated by the Member for the giving of notices;

(e) sending it by email to an email address nominated by the Member;

(f) sending it via any other electronic means permitted by the Act and nominated by the Member for the giving of notices, including providing an electronic link to the notice; or

(g) giving it by any other means permitted by the Act.

16.2 When notice is given

A notice is deemed to be given by the Organisation and received by the Member:

(a) if delivered in person, when delivered to the Member;

(b) if posted, on the day after the date of posting to the Member, whether delivered or not;

(c) if sent by facsimile transmission, on the day after the date of its transmission; or

(d) if sent by email or other electronic means, on the day after the date of its transmission,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am (addressee's time) on the next Business Day.

16.3 No notice of no valid address

If:

(a) any Member has not provided to the Office an address for registration in the Register; or

(b) the Organisation believes that a Member is not known at the address registered in the Register,

unless and until the Member provides a valid address to the Office, all notices to be sent to that Member are taken to be given to the Member if the notice is displayed at the Organisation's Office for 48 hours, and are taken to be served at the commencement of that period.

17. Audit and accounts

17.1 Organisation must keep accounts

(a) The Organisation must keep Financial Records in accordance with the Act and the ACNC Act (as applicable) that:

(i) correctly record and explain its transactions, financial position and performance; and

(ii) enable true and fair Financial Statements to be prepared in accordance with Part 5 of the Act.

(b) The Organisation must retain its Financial Records for at least 7 years after the transactions covered by the relevant records are completed.

(c) The Organisation must allow any of the Directors and the auditor to inspect those accounts at all reasonable times.

17.2 Financial reporting, audit and review

(a) The Board must cause the Organisation to comply with all financial reporting obligations imposed on it under the Act or the ACNC Act (as applicable).

(b) Without limiting clause 17.2(a), the Board must cause the Organisation to:

(i) if it is a tier 1 association, prepare annual Financial Statements, presented under Part 5 of the Act;

(ii) if it is a tier 2 association or tier 3 association, prepare an annual Financial Report, presented under Part 5 of the Act;

(iii) have its Financial Statements or Financial Report reviewed or audited (as applicable) if:

a) it is required by the Act;

b) it is directed by the Commissioner;

c) the Members pass a resolution requiring it; or

d) it is required by the ACNC Act, as a condition of a funding arrangement; holding of a charitable collections licence or otherwise at law; and

(iv) if required to be presented for consideration under Part 5 of the Act, present a copy of the report of the review or the auditor's report on the Financial Statements or Financial Report (as applicable) to the Annual General Meeting.

18. Inspection of records

Subject to the Act and to clause 7, a Member may, at any reasonable time, inspect the books, documents, records and securities of the Organisation without charge.

19. Indemnity and insurance

19.1 Definition

In this clause **Officer** has the meaning given in the Act.

19.2 Organisation must indemnify Officers

To the full extent permitted by law and without limiting the powers of the Organisation, the Organisation may indemnify any person who is or has been an Officer of the Organisation, or of a related body corporate of the Organisation against all losses, liabilities, damages, costs, charges and expenses of any kind incurred by the Officer as an officer of the Organisation or of a related body corporate.

19.3 Documentary indemnity and insurance policy

To the extent permitted by any applicable law and without limiting the powers of the Organisation, the Board may authorise the Organisation to, and the Organisation may, enter into any:

(a) documentary indemnity in favour of; or

(b) insurance policy for the benefit of,

a person who is, or has been, an Officer of the Organisation or of a related body corporate of the Organisation, which indemnity or insurance policy may be in such terms as the Board approves and, in particular, may apply to acts or omissions prior to or after the time of entering into the indemnity or policy.

20. Affiliation and membership of other similar organisations

The Organisation may in a general meeting determine to affiliate with or become a member of, or to accept affiliation or membership of, any organisation (including any regional or international association) having similar or like interests to the Organisation.

21. Resolving disputes

21.1 Application of disputes procedure

The disputes procedure in this clause applies to disputes under this Constitution or concerning any matters dealt with in this Constitution between:

(a) a Member and another Member (or Members);

(b) a Member (or Members) and the Organisation.

21.2 Disputes procedure

(a) In the case of a dispute between a Member and another Member (or Members), the parties to the dispute must attempt to resolve the dispute (in person or by telephone, email, or any other means of communication) within 28 days after the dispute comes to the attention of all of the parties.

(b) In the case of a dispute between a Member (or Members) and the Organisation, the Member or Members concerned must attempt to resolve the dispute (in person or by telephone, email, or any other means of communication) with:

(i) the CEO on behalf of the Organisation; or

(ii) any other person appointed by the Chairperson if, in the Chairperson's opinion, it is not suitable for the CEO to discuss the matter,

within 28 days after the dispute comes to the attention of all of the parties.

(c) If the dispute is not resolved within the 28 day period specified in rule 21.2(a) or 21.2(b) (as applicable), either party may initiate the dispute resolution procedure by giving a written notice to the CEO identifying the parties to the dispute and the subject of the dispute.

(d) Within 28 days of receipt of a notice under clause 21.2(c), the CEO must refer the dispute to:

(i) a standing committee appointed by the Board in accordance with clause 11.3 for the resolution of disputes (which may consist of any 1 or more persons permitted under clause 11.3(a)); or

(ii) in the absence of a committee appointed by the Board, any 1 or more persons chosen by the Chairperson (which may consist of any persons permitted under clause 11.3(a)),

each a **Dispute Committee**.

(e) The Dispute Committee must:

(i) convene a meeting to determine the dispute using any medium by which each of the participants can simultaneously hear all the other participants (including telephone, video conferencing or any other means of instant communication);

(ii) give all parties at least 14 days prior written notice of the date, time and place of the meeting, informing them that they may attend the meeting (in person or via telephone, video conferencing or any other available means) and make oral or written submissions (or both);

(iii) at the meeting, give each party to the dispute, or the party's Representative, a full and fair opportunity to make oral or written submissions; and

(iv) determine the dispute, or if it thinks appropriate, refer the dispute to an alternative dispute resolution process.

(f) Written notice of the Dispute Committee's decision must be given to all parties to the dispute within 14 days after the meeting referred to in clause 21.2(e)(i).

(g) Following the Dispute Committee's decision, any party to the dispute may apply to the State Administrative Tribunal (or any other appropriate body) to determine the dispute in accordance with the Act or otherwise at law.

22. Winding up

If upon the winding up or dissolution of the Organisation there remains, after satisfaction of all its debts and liabilities, any property or assets whatsoever, such property or assets will not be paid to or distributed among the Members, but will be given or transferred to another organisation or organisations:

(a) with objects similar to the Objects; and

(b) which prohibits the distribution of its income and property amongst its members to an extent at least as great as imposed on the Organisation under clause 4,

and determined by a Special Resolution of Members or if it not practicable to obtain such a Special Resolution, by a Judge of the Supreme Court of Western Australia who has jurisdiction in the matter.

23. Variation or amendment of Constitution

This Constitution may be varied, amended or rescinded from time to time by Special Resolution of the Members, in accordance with Division 2 of Part 3 of the Act.

WAITOC

Western Australian Indigenous
Tourism Operators Council