

**WA Parks Foundation
ACN 615 298 952**

Constitution

Adopted by Board: 29 September 2016

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**WA Parks Foundation
ACN 615 298 952**

Constitution

1. Preliminary

1.1 Name of the Company

The name of the Company is WA Parks Foundation (ACN 615 298 952) (**Company**).

1.2 Type of Company

The Company is a not-for-profit public Company limited by guarantee which is established to be, and to continue as, a charity.

1.3 Limited liability of Members

The liability of Members is limited to the amount of the Guarantee in Clause 1.4.

1.4 The Guarantee

Each Member must contribute an amount not more than \$10 (**Guarantee**) to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:

- (a) debts and liabilities of the Company incurred before the Member stopped being a Member; or
- (b) costs of winding up.

2. Definitions and interpretation

2.1 Definitions

In this Constitution:

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

Annual General Meeting means a General Meeting held in accordance with Clause 8.3(a).

Appointed Director means a Director appointed under Clause 9.4 or 9.7(b)(i) as a Director.

Auditor means an auditor of the Company appointed by the initial Board or an auditor appointed under Clause 8.3(b)(vi), being a person who is registered as an auditor under the Corporations Act or a certified practicing accountant or chartered accountant.

Board means the board of Directors (including the Chairman).

Board Meeting means a meeting of the Board in accordance with Clause 12.

Business Day means a day (excluding a Saturday, Sunday or public holiday in Western Australia) on which trading banks are open for business in Western Australia.

By-Laws means the by-laws of the Company made by the Board from time to time under Clause 17.

CEO means the person appointed under Clause 14.1 who currently holds office as Chief Executive Officer of the Company.

Chairman means the Director elected by the Board as the Company's Chairman under Clause 9.10(a).

Commissioner means the commissioner of taxation, a second commissioner of taxation or a deputy commissioner of taxation for the purposes of the ITAA97.

Company means the company referred to in Clause 1.1.

Constitution means this Constitution of the Company as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth).

Deductible Gift Recipient means an institution, fund, authority or any other entity that is endorsed as a deductible gift recipient by the Commissioner under Division 30 of the ITAA97 or is a specific listed deductible gift recipient under Division 30 of the ITAA97.

Department of the Environment means an Australian public service department of state under the *Public Service Act 1999* (Cth), charged with the responsibility of developing and implementing national policy, programs and legislation to protect and conserve Australia's environment and heritage.

Director means an Initial Director or a person appointed or elected under Clause 9 as director of the Company.

Elected Director means a Director elected under Clause 9.5(a) or appointed under Clause 9.7(b)(ii) as a Director.

Entity means:

- (a) an individual, 18 years of age or over; or
- (b) incorporated body.

Financial Member means a Member who has paid any applicable Subscription for the Financial Year set by the Board from time to time by the due date or such later time as the Board allows for payment.

Financial Year means 1 July to 30 June of the following year.

General Meeting means a meeting of Members and includes the Annual General Meeting.

Guarantee means the guarantee referred to under Clause 1.4.

Guidelines to the Register of Environmental Organisations means the guidelines set out by the Department of the Environment for the register of environmental organisations.

Initial Director means a person who, with their consent:

- (a) is named in the application for registration of the Company as a proposed Director of the Company; or
- (b) is appointed by the Board as an Initial Director within 6 months of the Company's incorporation.

Initial Member means an Entity who is named in the application for registration of the Company, with their consent, as a proposed Member of the Company.

ITAA97 means the *Income Tax Assessment Act 1997* (Cth).

Member means an Initial Member and an Entity whose application for membership of the Company (in any category of Membership under Clause 5.3) has been accepted in accordance with Clause 5.9, who has not stopped being a member of the Company in accordance with Clause 5.11, and **Membership** has a corresponding meaning.

Member Present means, in connection with a General Meeting, a Voting Member present in person, by representative or by proxy at the venue or venues for the meeting.

Nomination Committee means the committee of the Board appointed and established under Clause 9.9.

Objects means the objects of the Company set out under Clause 3.1.

Parks means:

- (a) all categories of land and marine areas set aside, reserved or identified in or under Western Australian legislation for the purpose of conservation of the natural environment and other purposes consistent with that legislation; and
- (b) any category of land or marine area in Western Australia, or particular location in Western Australia which the Board determines to be a Park for the purpose of conservation of the natural environment.

Public Fund means the fund established in accordance with Clause 4.1.

Public Fund Committee means a committee of management of no fewer than three persons appointed under Clause 4.3 who will administer the Public Fund.

Quorum means quorum at General Meetings in accordance with Clause 8.5.

Register of Environmental Organisations means the register established under subdivision 30-E of the ITAA97.

Register of Members means the register of Members kept by the Company in accordance with Clause 5.6.

Registered Charity means a charity that is registered under the ACNC Act.

Relevant Proceedings means, in relation to a Director, Secretary, CEO or Treasurer or other senior officer:

- (a) any hearing, conference, dispute, inquiry or investigation by a court, arbitrator, mediator, tribunal or governmental or administrative body;
- (b) any procedural step preceding or otherwise relating to such a hearing conference, dispute, inquiry or investigation, in which the officer is involved:
 - (i) as a party, witness or otherwise; and
 - (ii) because the officer is or was an officer of the Company.

Responsible Persons means persons defined by the Guidelines to the Register of Environmental Organisations as 'responsible persons'.

Required Minimum means the minimum number of Directors as set out under Clause 9.1(a).

Secretary means the person appointed under Clause 13.1 who currently holds office as Secretary or acting Secretary of the Company.

Special Resolution means a resolution:

- (a) of which notice has been given under Clause 8.4(e)(iii); and
- (b) that has been passed by at least 75% of the votes cast by Members Present and entitled to vote on the resolution.

Subscription means the amount (if any) to be paid by a Member or an applicant for Membership in accordance with Clause 5.3(d).

Surplus Assets means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

Treasurer means the person appointed under Clause 15.1 who currently holds office as Treasurer or acting Treasurer of the Company.

Voting Member means a Member who is entitled to vote at all General Meetings.

2.2 Reading this Constitution with the Corporations Act

- (a) The replaceable rules set out in the Corporations Act do not apply to the Company.
- (b) While the Company is a Registered Charity, the ACNC Act and the Corporations Act override any Clauses in this Constitution which are inconsistent with those Acts.
- (c) If the Company is not a Registered Charity (even if it remains a charity), the Corporations Act overrides any Clause in this Constitution which is inconsistent with that Act.
- (d) A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this Constitution.

2.3 Interpretation

In this Constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression;
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations);
- (c) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (d) a reference to '\$' or 'dollar' is to Australian currency; and
- (e) if any day appointed or specified by this Constitution for the payment of any money or doing of any thing falls on a day which is not a Business Day, the day so appointed or specified shall be deemed to be the next Business Day.

2.4 Inconsistencies

If there is any inconsistency between a Clause in this Constitution and a By-law, the Clause in this Constitution will prevail to the extent of the inconsistency.

3. Objects, charitable purposes and powers

3.1 Objects

- (a) The Objects of the Company are generally:
 - (i) to promote the conservation of Parks;
 - (ii) to improve the natural environment; and
 - (iii) to undertake programs to promote community appreciation, understanding and support of, involvement with and engagement in Parks in order to improve the connection of people to the natural environment.
- (b) Means by which the Company may achieve its Objects include:
 - (i) protecting and enhancing the natural environment of Parks, including plants, animals, and natural features;
 - (ii) providing information or education, or the carrying on of research, on Parks;
 - (iii) conserving and improving Parks;
 - (iv) introducing programs to increase community understanding of, access to, engagement with and appreciation of Parks;

- (v) working with other parties in consolidating or otherwise increasing the number and size of Parks where this contributes to the conservation of plants, animals, and natural features;
- (vi) promoting the connection of people to Parks and the associated health benefits for people engaging with Parks;
- (vii) ensuring sustainability of the Company; and
- (viii) promoting and attracting donations to the Public Fund established and maintained under Clause 4 for the purpose of supporting the environmental objects and purposes of the Company.

3.2 Application of the Objects

The Company must operate solely for the purpose of promoting and advancing the Objects. The Company is not required to promote each of the Objects at the same time or in any particular order and may, in its absolute discretion, determine the level and amount of promotion, funding or any other support that should be applied to any one or more specific Objects at any given time.

3.3 Powers of the Company

- (a) Subject to Clause 3.4, the Company has the following powers, which may only be used to carry out the Objects:
 - (i) the powers of an individual; and
 - (ii) all the powers of a Company limited by guarantee under the Corporations Act.
- (b) Subject to the ACNC Act, the Corporations Act and this Constitution, the Company may do all things necessary or convenient for carrying out the Objects and, in particular, may:
 - (i) acquire, hold, deal with, and dispose of any real or personal property;
 - (ii) open and operate bank accounts;
 - (iii) invest the funds of Company:
 - (A) as trust funds in accordance with Part III of the *Trustees Act 1962 (WA)*; or
 - (B) in any other manner authorised in this Constitution;
 - (iv) borrow money upon such terms and conditions as the Board considers fit;
 - (v) give such security for the discharge of liabilities incurred by the Company as the Board thinks fit;
 - (vi) appoint agents to transact any business of the Company on its behalf;
 - (vii) collaborate with other organisations to achieve the Objects; and

- (viii) enter into any contract the Board considers necessary or desirable in pursuit of the Objects.
- (c) The Board may, unless this Constitution otherwise provides, act as trustee and accept and hold real and personal property upon trust, but the Board does not have the power to do any act or thing as a trustee that, if done otherwise than as a trustee, would contravene the Corporations Act or this Constitution.

3.4 Not-for-profit

- (a) The income and assets of the Company shall be used and applied solely in promotion of its Objects and no portion shall be paid, distributed or transferred directly or indirectly to its Members, Directors or other officers by way of dividend, bonus or by way of profit, except as provided in Clauses 3.4(b) and 20.2.
- (b) Clause 3.4(a) does not stop the Company from doing the following things, provided they are done in good faith:
 - (i) paying a Member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company; or
 - (ii) making a payment to a Member in carrying out the Company's charitable purpose(s) at fair and reasonable rates or rates more favourable to the Company.

3.5 Amending the Constitution

- (a) Subject to Clause 3.5(b), the Members may amend this Constitution by passing a Special Resolution.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

4. The WA Parks Foundation Public Fund

4.1 Establishment of the WA Parks Foundation Public Fund

The WA Parks Foundation Public Fund (**Public Fund**) is established as a separate entity to receive all gifts of money or property for the specific purpose of supporting the environmental objects and purposes of the Company. Any money received because of such gifts, and any interest or otherwise accrued from that money or property, must be credited to a separate bank account held in the name of the Public Fund which must not receive any other money or property into its account and must be administered so as to comply with subdivision 30-E of the ITAA97.

4.2 Objective of the Public Fund

The objective of the Public Fund is to support the Company's environmental objects and purposes as set out in Clause 3.1(a).

4.3 Establishment of the Public Fund Committee

- (a) The Board will establish a Public Fund Committee to manage and administer the Public Fund.
- (b) The Board must appoint a minimum of 3 people to the Public Fund Committee, including at least 1 Director, and a majority of the Public Fund Committee members must be Responsible Persons.
- (c) Each member of the Public Fund Committee will be appointed for an initial term of 3 years and may serve on the Public Fund Committee for up to 3 consecutive terms.
- (d) The Board may remove a member of the Public Fund Committee if it considers that it is in the best interest of the administration of the Public Fund to do so and may, at any time, appoint any person to fill a vacancy on the Public Fund Committee subject to Clause 4.3(b).

4.4 Requirements of the WA Parks Foundation Public Fund

- (a) The Company must inform the Department of the Environment as soon as possible if:
 - (i) it changes its name or the name of the Public Fund;
 - (ii) there is any change to the membership of the Public Fund Committee; or
 - (iii) there has been any departure from the model rules for public funds located in the Guidelines to the Register of Environmental Organisations.
- (b) The Company and the Public Fund must comply with any rules that the Treasurer and the Federal Minister for the Environment may make to ensure that gifts made to the Public Fund are only used for its principal purpose and will accept any rule the Minister makes to ensure that gifts made to the Public Fund will only be used for the environmental purposes.
- (c) Any allocation of funds or property to other Entities will be made in accordance with the established Objects and purposes of the Company, although any preference of the donor which is consistent with the Objects as set out in Clause 3.1 may be taken into account.
- (d) In the case of winding-up the Public Fund, any Surplus Assets are to be transferred to another Public Fund with similar objectives that is on the Register of Environmental Organisations.
- (e) Statistical information requested by the Department of the Environment on donations to the Public Fund will be provided by the Public Fund Committee within four months of the end of the Financial Year.
- (f) An audited financial statement for the Company and its Public Fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of Public Fund monies and the management of Public Fund assets.

4.5 Operation of the WA Parks Foundation Public Fund

- (a) The Public Fund will be operated on a not-for-profit basis.
- (b) Entities will be invited to make gifts of money and property and any person can donate money to the Public Fund in support of the environmental objects and purposes of the Company and may donate property the income from which can be used for these purposes.
- (c) Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Public Fund's bank account.
- (d) The Company must open and the Public Fund Committee must maintain a separate bank account to deposit money donated to the Public Fund, including accrued interest. Any withdrawals from that bank account will require two signatures of any two members of the Public Fund Committee permanently located in Australia.
- (e) Gifts to the Public Fund are to be kept separate from other funds of the Company (such as sponsorship monies or testamentary gifts (if any)).
- (f) The release of monies from the Public Fund bank account and the management of, and sale of, Public Fund assets must be authorised by the Public Fund Committee.
- (g) Proper accounting records and procedures are to be kept and used for the Public Fund.

4.6 Receipts

- (a) Receipts for donations with a value of more than \$2 are to be issued in the name of the Public Fund and may be issued electronically.
- (b) Receipts must be issued in the name of the Public Fund and must contain the following information:
 - (i) the receipt number;
 - (ii) the date the donation was received;
 - (iii) name of the Company;
 - (iv) the Company's ACN;
 - (v) name of the Public Fund;
 - (vi) name of the donor;
 - (vii) an indication that the Public Fund is listed on the Register of Environmental Organisations;
 - (viii) that the amount is for a gift;
 - (ix) the signature of a person authorised to act on behalf of the Public Fund; and

- (x) any other matters required to be included on the receipt pursuant to the requirements of the ITAA97.
-

5. Members

5.1 Membership

The Members of the Company are:

- (a) the Initial Members; and
- (b) any other Entity that the Board allows to be a Member, in accordance with the Constitution,

provided they have not stopped being a Member in accordance with the Constitution.

5.2 Membership rights

Unless otherwise stated in this Constitution, Members may be appointed by the Board to positions on the Board, the Public Fund Committee or any other committee established by the Board.

5.3 Categories of Membership

- (a) The categories of Membership are:
 - (i) individual Members;
 - (ii) family Members;
 - (iii) affiliate Members;
 - (iv) corporate Members;
 - (v) student Members;
 - (vi) honorary life Members (who are non-Financial Members); and
 - (vii) any additional categories of Members created from time to time by the Board.
- (b) Each category of Membership may be further classified as:
 - (i) either Financial Members or non-Financial Members; and
 - (ii) either Voting Members or non-Voting Members.
- (c) The Board may specify the financial status, renewal date, voting rights and other terms of each category of Membership.
- (d) The Board may from time to time determine the amount of any Subscription applying to each category of Membership.

5.4 Financial Members

The Company must, at all times, have at least 50 Financial Voting Members.

5.5 Payment of Subscription

Unless exempted elsewhere in this Constitution, each Member who is required to pay a Subscription (i.e. each Financial Member) must pay to the Company, on or before the renewal date of their Membership or such other date as the Board from time to time determines, the amount of the Subscription determined under Clause 5.3(d).

5.6 Register of Members

- (a) The Secretary, on behalf of the Company, must keep and maintain the Register of Members in an up-to-date condition.
- (b) The Register of Members may be kept electronically.
- (c) The Register of Members must contain:
 - (i) for each current Member:
 - (A) name;
 - (B) residential address and electronic mail address (if any);
 - (C) any alternative address nominated by the Member for the service of notices;
 - (D) the class of Membership to which the Member belongs; and
 - (E) date the Member was entered on to the Register of Members; and
 - (ii) for each Entity who stopped being a Member in the last 7 years:
 - (A) name;
 - (B) residential address and electronic mail address (if any);
 - (C) any alternative address nominated by the Member for the service of notices;
 - (D) the class of Membership to which the Member belonged; and
 - (E) dates the Membership started and ended.
- (d) Subject to Clause 5.6(e), upon the written request of a Member, the Company must give current Members access to the Register of Members.
- (e) Members may nominate which of their addresses (residential, postal and/or electronic) are shared with other Members, provided that at least one address is nominated.
- (f) Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of Members.

5.7 Who can be a Member

An Entity which supports the Objects of the Company is eligible to apply to be a Member of the Company under Clause 5.8.

5.8 How to apply to become a Member

- (a) An Entity wishing to become a Member of the Company must:
 - (i) complete an application for Membership in the form prescribed by the Board from time to time;
 - (ii) send the completed application form to the Secretary;
 - (iii) indicate through the application form support for the Objects of the Company;
 - (iv) agree to comply with the Company's Constitution, including paying the Guarantee under Clause 1.4 if required;
 - (v) pay the relevant Subscription (if any) according to the rights attached to their nominated category of Membership; and
 - (vi) if the Entity is a body corporate, nominate an individual as the nominated representative of the Entity and the application form must:
 - (A) state the name and address of the nominated representative; and
 - (B) be signed by the nominated representative.
- (b) Each Member which is a body corporate must promptly notify the Secretary in writing of any change in the person nominated as its representative under Clause 5.8(a)(vi).

5.9 Board decides whether to approve Membership

- (a) The Board must consider an application for Membership within a reasonable time after the Secretary receives the application.
- (b) The Entity will only become a Member upon:
 - (i) the application for Membership being properly completed and submitted to the Secretary;
 - (ii) the Board being satisfied that the applicant has provided all of the information the Company reasonably requires;
 - (iii) the Board being satisfied that the applicant complies with Clause 5.8(a);
 - (iv) acceptance by the Board of the application;
 - (v) payment of the first Subscription (if any) to the Secretary; and
 - (vi) the applicant's name being entered into the Register of Members.

- (c) If the Board approves an application, the Secretary must as soon as possible:
 - (i) enter the new Member on the Register of Members; and
 - (ii) write to the applicant to tell them that their application was approved, and the date that their Membership started (see Clause 5.10).
- (d) If the Board rejects an application, the Secretary must:
 - (i) write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons; and
 - (ii) refund to the applicant any Subscription paid by the applicant.

5.10 When an Entity becomes a Member

Other than the Initial Members, an Entity will become a Member when they are entered on the Register of Members.

5.11 When an Entity stops being a Member

An Entity immediately stops being a Member if they:

- (a) die (for a natural person);
- (b) are wound up or otherwise dissolved or deregistered (for an incorporated body);
- (c) resign, by writing to the Secretary;
- (d) are expelled under Clause 7.2(a)(iv), subject to Clause 7.3(b);
- (e) are not a Financial Member and have not responded in writing within three months to a written request from the Secretary to confirm that they want to remain a Member; or
- (f) are a Financial Member and fail to pay their relevant Subscription within two months after its due date, unless the Board extends the time for payment.

6. Dispute resolution

- (a) The dispute resolution procedure in this Clause applies to disputes (disagreements) under this Constitution between a Member or Director and:
 - (i) one or more Members;
 - (ii) one or more Directors; or
 - (iii) the Company.
- (b) A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under Clause 7 until the disciplinary procedure is completed.

- (c) Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- (d) If those involved in the dispute do not resolve it under Clause 6(c), they must:
 - (i) as soon as practicable and in any event, within 10 days, tell the Board about the dispute in writing;
 - (ii) as soon as practicable and in any event, within 10 days, agree on a mediator or request that a mediator be appointed by the Board; and
 - (iii) attempt in good faith to settle the dispute by mediation.
- (e) The mediator must:
 - (i) be chosen by agreement of those involved; or
 - (ii) where those involved do not agree:
 - (A) for disputes between Members, be a person appointed by the Board; or
 - (B) for other disputes, be a person appointed by the president of the law institute or society in the state or territory in which the Company has its registered office.
- (f) A mediator appointed under Clause 6(e)(i) or (e)(ii):
 - (i) may be a Member or former Member of the Company;
 - (ii) must not have a personal interest in the dispute; and
 - (iii) must not be biased towards or against anyone involved in the dispute.
- (g) When conducting the mediation, the mediator must:
 - (i) allow those involved a reasonable chance to be heard;
 - (ii) allow those involved a reasonable chance to review any written statements;
 - (iii) ensure that those involved are given natural justice; and
 - (iv) not make a decision on the dispute.

7. Suspension and expulsion of Members

7.1 Board to consider suspension or expulsion

- (a) In accordance with this Clause, the Board may resolve to warn, suspend or expel a Member from the Company if the Board considers that:
 - (i) the Member has breached this Constitution;
 - (ii) the Member has breached the By-Laws;

- (iii) the Member has engaged in conduct that does not support the Objects or otherwise acts against the Objects; or
 - (iv) the Member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- (b) At least 14 days before the Board Meeting at which a resolution under Clause 7.1(a) will be considered, the Secretary must notify the Member in writing:
- (i) that the Board is considering a resolution to warn, suspend or expel the Member;
 - (ii) that this resolution will be considered at a Board Meeting and the date of that meeting;
 - (iii) what the Member is said to have done or not done;
 - (iv) the resolution that has been proposed; and
 - (v) that the Member may provide an explanation to the Board, and details of how to do so.
- (c) Before the Board passes any resolution under Clause 7.1(a), the Member must be given a chance to explain or defend themselves by:
- (i) sending the Board a written explanation before that Board Meeting; and/or
 - (ii) speaking at the Board Meeting.

7.2 Board to consider disciplinary actions

- (a) After considering any explanation given under Clause 7.1(c), the Board may:
- (i) take no further action;
 - (ii) warn the Member;
 - (iii) suspend the Member's rights as a Member for a period of no more than 12 months;
 - (iv) expel the Member;
 - (v) refer the decision to an unbiased, independent person on conditions that the Board considers appropriate (however, the person can only make a decision that the Board could have made under this Clause); or
 - (vi) require the matter to be determined at a General Meeting.
- (b) The Board cannot fine a Member.
- (c) The Secretary must give written notice to the Member of the decision under Clause 7.2(a) as soon as possible.

- (d) There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this Clause.

7.3 Effect of disciplinary procedures

- (a) Disciplinary procedures under Clauses 7.2(a)(ii), 7.2(a)(v) and 7.2(a)(vi) must be completed as soon as reasonably practicable.
- (b) A Member who is expelled under Clause 7.2(a)(iv), ceases to be a Member 14 days after the day on which the decision to expel the Member is notified under Clause 7.2(c).
- (c) If a Member who is suspended under Clause 7.2(a)(iii), the suspension will take effect 14 days after the day on which the decision to suspend the Member is notified to the Member under Clause 7.2(c), and the suspension will operate for the period determined by the Board and notified to the Member.

7.4 Bar to legal proceedings

- (a) No Entity who has been expelled or whose Membership has been suspended or who has been subject to any disciplinary procedures under Clause 7.2(a), may commence or prosecute any action or legal proceeding for defamation against any Member who made a complaint or gave evidence (verbally or in writing) in support of the complaint, or who exercised any power or duty as a Director or a member of the Public Fund Committee.
- (b) If any action or legal proceeding is commenced in connection with an expulsion or suspension from Membership, this Clause may be pleaded as an absolute bar to that action or legal proceeding.

8. General Meetings of Members

8.1 General Meetings called by Board

- (a) The Board may call a General Meeting.
- (b) If Members with at least 5% of the votes that may be cast at a General Meeting make a written request in accordance with Clause 8.1(d) for a General Meeting to be held, the Board must:
 - (i) within 21 days of the Members' request, give all Members notice of a General Meeting; and
 - (ii) hold the General Meeting within 2 months of the Members' request.
- (c) The percentage of votes that Members requesting a General Meeting have (in Clause 8.1(b)) is to be worked out as at midnight before the Members request the meeting.
- (d) The Members who make the request to the Board for a General Meeting must:
 - (i) state in the request any resolution to be proposed at the meeting;
 - (ii) sign the request; and

- (iii) give the request to the Company.
- (e) Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.

8.2 General Meetings called by Members

- (a) If the Board does not call the meeting within 21 days of being requested under Clause 8.1(b), 50% or more of the Members who made the request may call and arrange to hold a General Meeting.
- (b) To call and hold a meeting under Clause 8.2(a) the Members must:
 - (i) as far as possible, follow the procedures for General Meetings set out in this Constitution;
 - (ii) call the meeting using the list of Members on the Company's Register of Members, which the Company must provide to the Members making the request at no cost; and
 - (iii) hold the General Meeting within three months after the request was given to the Company.
- (c) The Company must pay the Members who request the General Meeting any reasonable expenses they incur because the Board did not call and hold the meeting.

8.3 Annual General Meeting

- (a) A General Meeting, called the Annual General Meeting, must be held:
 - (i) within 18 months after registration of the Company; and
 - (ii) after the first Annual General Meeting, at least once in every calendar year and within 5 months of the end of the Financial Year.
- (b) Even if these items are not set out in the notice of meeting, the business of an Annual General Meeting may include:
 - (i) a review of the Company's activities;
 - (ii) the annual financial report;
 - (iii) the Directors' report
 - (iv) any Auditor's report;
 - (v) the election of Directors; and
 - (vi) the appointment and payment of auditors, if any.
- (c) Before or at the Annual General Meeting, the Board must give information to the Members on the Company's activities and finances during the period since the last Annual General Meeting.

- (d) The Chairman of the Annual General Meeting must give Members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

8.4 Notice of General Meetings

- (a) Notice of a General Meeting must be given to:
 - (i) each Member entitled to vote at the meeting;
 - (ii) each Director; and
 - (iii) the Auditor (if any).
- (b) Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- (c) Subject to Clause 8.4(d), notice of a meeting may be provided less than 21 days before the meeting if:
 - (i) for an Annual General Meeting, all the Members entitled to attend and vote at the Annual General Meeting agree beforehand; or
 - (ii) for any other General Meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (d) Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
 - (i) remove a Director;
 - (ii) appoint a Director in order to replace a Director who was removed; or
 - (iii) remove an Auditor.
- (e) Notice of a General Meeting must include:
 - (i) the place, date and starting time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (ii) the general nature of the meeting's business;
 - (iii) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
 - (iv) a statement that Members have the right to appoint proxies and that, if a Member appoints a proxy:
 - (A) the proxy does not need to be a Member of the Company;
 - (B) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and

- (C) the proxy form must be delivered to the Company at least 48 hours before the meeting.
- (f) If a General Meeting is adjourned for one month or more, the Members must be given new notice of the resumed meeting.

8.5 Quorum at General Meetings

- (a) For a General Meeting to be held, at least 10 Members Present (**Quorum**) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a Quorum is present, an Entity may only be counted once (even if that person is a representative or proxy of more than one Member).
- (b) No business may be conducted at a General Meeting if a Quorum is not present.
- (c) If there is no Quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the Chairman or the person presiding specifies. If the Chairman or person presiding does not specify one or more of those things, the meeting is adjourned to:
 - (i) if the date is not specified - the same day in the next week;
 - (ii) if the time is not specified - the same time; and
 - (iii) if the place is not specified - the same place.
- (d) If no Quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

8.6 Auditor's right to attend meetings

- (a) The Auditor, if any, is entitled to attend any General Meeting and to be heard by the Members on any part of the business of the meeting that concerns the Auditor in the capacity of Auditor.
- (b) The Company must give the Auditor, if any, any communications relating to the General Meeting that a Member of the Company is entitled to receive.

8.7 Using technology to hold meetings

- (a) The Company may hold a General Meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- (b) Anyone using this technology is taken to be present in person at the meeting.

8.8 Adjournment of meetings

- (a) If a Quorum is present, a General Meeting must be adjourned by the Chairman or person presiding if a majority of Members Present request it.
- (b) Only unfinished business may be dealt with at a meeting resumed after an adjournment.

8.9 Members' resolutions

- (a) A Member may not at any meeting move any resolution unless:
 - (i) Members with at least 5% of the votes that may be cast on the resolution have given the Company written notice of the resolution, or the requirements of section 249N of the Corporations Act have otherwise been satisfied, and 2 months' notice has elapsed since the notice was given; or
 - (ii) the resolution has previously been approved by the Board.
- (b) A resolution at a meeting of Members is passed if the number of votes cast in favour of the resolution by Members entitled to vote on the resolution exceeds the number of votes cast against the resolution by Members entitled to vote on the resolution.
- (c) Unless otherwise required by this Constitution or the Corporations Act, all resolutions of the Company are ordinary resolutions which are resolutions passed by more than 50% of the votes cast by Members entitled to vote on the resolutions recorded in favour or against.

8.10 Agenda for General Meetings

All items for inclusion on the agenda for a General Meeting, including notice of any Special Resolution that is proposed by the Board or Members, must be received by the Secretary not later than 28 days before the General Meeting in question.

8.11 Voting

- (a) Each Member Present is entitled to a deliberative vote.
- (b) A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded in accordance with Clause 8.12.
- (c) A declaration by the Chairman of a meeting of Members that a resolution on a show of hands is passed, passed by a particular majority, or not passed, and an entry to that effect in the minutes of the meeting, are sufficient evidence of that fact, unless proved incorrect.
- (d) Neither the Chairman nor the minutes of the meeting need to state the number or proportion of the votes.
- (e) A challenge to a right to vote at a meeting of Members:
 - (i) may only be made at the meeting; and
 - (ii) must be determined by the Chairman, whose decision is final.
- (f) A vote not disallowed following a challenge under Clause 8.11(e) is valid for all purposes.

8.12 Polls

- (a) A poll may be demanded on any resolution at a meeting of Members by:
 - (i) at least 5 Members Present and entitled to vote on that resolution;

- (ii) one or more Members Present and who are together entitled to at least 5% of the votes that may be cast on that resolution on a poll; or
 - (iii) the Chairman or person presiding at that meeting.
- (b) A poll on a resolution at a meeting of Members may be demanded:
 - (i) before a vote on that resolution is taken; or
 - (ii) before or immediately after the results of the vote on that resolution on a show of hands are declared.
- (c) A demand for a poll may be withdrawn.
- (d) A poll demanded on a resolution at a meeting of Members other than for the election of the Chairman of that meeting or the adjournment of that meeting must be taken in the manner and at the time and place the Chairman directs.
- (e) A poll demanded on a resolution at a meeting of Members for the election of the Chairman of that meeting or the adjournment of that meeting must be taken immediately.
- (f) The result of a poll demanded on a resolution of a meeting of Members is a resolution of that meeting.
- (g) A demand for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business.

8.13 Appointment of proxy

- (a) A Member may appoint a proxy to attend and vote at a General Meeting on their behalf.
- (b) A proxy does not need to be a Member.
- (c) A proxy appointed to attend and vote for a Member at a General Meeting has the same rights as the Member to:
 - (i) speak at the meeting; and
 - (ii) vote in a vote in writing (but only to the extent allowed by the appointment).
- (d) A proxy does not have the authority to speak and vote for a Member at a meeting:
 - (i) while the Member is at the meeting; or
 - (ii) where the Company receives a written notice before the start or resumption of a General Meeting under Clause 8.13(j).
- (e) An appointment of proxy (proxy form) must be signed by the Member appointing the proxy and must contain:

- (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or, if a body corporate, the name of the office held by the proxy; and
 - (iv) the meeting(s) at which the appointment may be used.
- (f) A proxy appointment may be standing (ongoing).
- (g) Proxy forms must be received by the Company at the address stated in the notice under Clause 8.4(e)(iv) or at the Company's registered address at least 48 hours before a meeting.
- (h) Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:
- (i) dies;
 - (ii) is mentally incapacitated;
 - (iii) revokes the proxy's appointment; or
 - (iv) revokes the authority of a representative or agent who appointed the proxy.
- (i) A proxy appointment may specify the way the proxy must vote on a particular resolution.
- (j) A proxy appointment may be withdrawn at any time before the General Meeting by way of written notice given to both the Company and the proxy.

8.14 Voting by proxy

- (a) A proxy is not entitled to vote on a show of hands (but this does not prevent a Member appointed as a proxy from voting as a Member on a show of hands).
- (b) When a vote by poll is held, a proxy:
- (i) does not need to vote, unless the proxy appointment specifies the way they must vote;
 - (ii) if the way they must vote is specified on the proxy form, must vote that way; and
 - (iii) if the proxy is also a Member or holds more than one proxy, may cast the votes held in different ways.

9. Directors

9.1 Composition of the Board

- (a) The Board must have no fewer than six (6) (**Required Minimum**) and no more than ten (10) Directors comprising:
 - (i) up to 5 Elected Directors; and
 - (ii) up to 5 Appointed Directors.
- (b) The Board must take action to ensure that:
 - (i) the number of Appointed Directors does not exceed the number of Elected Directors;
 - (ii) the number of Elected Directors does not exceed the number of Appointed Directors; and
 - (iii) the total number of Directors does not fall below the Required Minimum,so far as is practicable by acting expeditiously under Clause 9.4, 9.5, 9.7(b) and/or 9.8.

9.2 Directors' qualifications

- (a) A person is eligible for appointment or election as a Director if:
 - (i) they are a Member, a proxy of a Member (appointed under Clause 8.13) or a nominated representative of a corporate Member of the Company;
 - (ii) in the case of Elected Directors, they:
 - (A) are nominated in writing by two Members or representatives of Members entitled to vote; or
 - (B) were previously appointed or elected as a Director at a Board Meeting or General Meeting and have been a Director since that meeting;
 - (iii) in the case of Appointed Directors, they:
 - (A) are nominated by a current Director; or
 - (B) were previously appointed or elected as a Director at a Board Meeting or General Meeting and have been a Director since that meeting; and
 - (iv) they give the Company:
 - (A) their signed consent to act as a Director of the Company;

- (B) a written document setting out their skills in relation to any skills specified for the Board by the By-Laws or set by the Board; and
 - (C) are not ineligible to be a Director under the Corporations Act or the ACNC Act.
- (b) A Director who has previously been elected as an Elected Director may be appointed as an Appointed Director and a Director who has previously been appointed as an Appointed Director is eligible for election as an Elected Director.
 - (c) Other than as provided for under Clause 3.4(b) or 10.3(b), no person who is receiving a financial benefit from the Company or who is in debt to the Company shall be eligible for appointment or election as a Director.

9.3 Initial Directors

- (a) The Initial Directors, half of whom are designated as holding an Elected Director position and half of whom are designated as holding an Appointed Director position, are the people who have agreed to act as Directors and who are either:
 - (i) named as proposed Directors in the application for registration of the Company; or
 - (ii) appointed as Initial Directors by the Board within 6 months of the Company's incorporation.
- (b) The Initial Directors shall each hold office for a term of 3 years or until required to resign under Clause 9.6 or Clause 9.7(a).
- (c) At the Company's first Annual General Meeting, the Board shall confirm:
 - (i) the names of the Initial Directors; and
 - (ii) which Initial Directors are designated as holding their office as an "Elected Director" and which are designated as holding their office as an "Appointed Director".

9.4 Appointment of Appointed Directors

Subject to Clauses 9.1 and 9.2, the Board may by resolution at a Board Meeting at any time appoint a person qualified to be a Director as a Director (**Appointed Director**).

9.5 Election of Elected Directors

- (a) Apart from the Initial Directors and the Appointed Directors, and subject to Clauses 9.1 and 9.2, the Members may elect a person qualified to be a Director as a Director by a resolution passed in an Annual General Meeting (**Elected Director**).
- (b) Nominations for candidates to fill vacancies of Elected Directors shall be called a minimum of 50 days prior to the Annual General Meeting.

- (c) A candidate nominated for election must satisfy Clause 9.2 and the nomination must be received at the registered office of the Company not later than 5pm on the day which is 35 days prior to the Annual General Meeting at which the candidate seeks election.
- (d) A list of the candidates' names in alphabetical order together with the names of the nominating Members must be sent to Members with the notice of the Annual General Meeting and including a paragraph provided by each candidate outlining their relevant skills and experience.
- (e) If the number of candidates for election as Elected Directors is equal to or fewer than the number of vacancies on the Board, the Chairman must declare those candidates to be duly elected as Elected Directors.
- (f) If the number of candidates for election as Elected Directors is greater than the number of vacancies on the Board, a vote must be taken for the election of the candidates by a show of hands unless the Chairman in his or her absolute discretion calls for a poll.
- (g) At the Annual General Meeting each Member Present and entitled to vote may vote for a number of candidates equal to the number of vacancies.
- (h) The candidates receiving the greatest number of votes cast in their favour must be declared by the Chairman of the meeting to be elected as Elected Directors.
- (i) If an equality of votes would otherwise prevent the successful candidate for a vacancy from being determined, the Chairman, prior to the declaration of the result of the poll, in addition to his or her deliberative vote is entitled to a casting vote, except that if the Chairman:
 - (i) does not exercise a casting vote; or
 - (ii) is one of the candidates who received the same number of votes;
 then the names of the candidates who received the same number of votes must be put to a further poll immediately.

9.6 Term of office and extensions

- (a) An Appointed Director shall hold office for a term of no more than 3 years from the date of his or her appointment.
- (b) Subject to Clause 9.7, an Elected Director shall hold office for a term of 3 years commencing from the conclusion of the Annual General Meeting at which he or she was elected.
- (c) Each Director must retire at the end of his or her term of office.
- (d) A Director is eligible for re-appointment by the Board or re-election by the Members to a maximum of 3 consecutive terms, subject to Clause 9.6(e) and the right to apply to have the term extended for further terms of 3 years pursuant to Clauses 9.6(f) and 9.6(g).
- (e) The total term served by a Director is the aggregate of any period served as an Elected Director and as an Appointed Director.

- (f) A Director or a past Director who would otherwise be ineligible for election or appointment as a Director having served the maximum total term under Clause 9.6(d), may make a written application to the Board to extend their term of service beyond the limit prescribed by the Constitution.
- (g) Applications made pursuant to Clause 9.6(f) must be made in writing to the Board at least 6 months prior to the date the individual's final term of office is due to expire.

9.7 Casual vacancies

- (a) The office of a Director becomes vacant if the Director:
 - (i) gives written notice of resignation as a Director to the Company;
 - (ii) retires under Clause 9.6(c);
 - (iii) dies;
 - (iv) is removed as a Director by a resolution of the Members;
 - (v) stops being a Member of the Company;
 - (vi) is a Financial Member and fails to pay their relevant Subscription within two months after its due date, unless the Board extends the time for payment;
 - (vii) is a representative of a Member, and that Member stops being a Member;
 - (viii) is representative of a Member, and the Member notifies the Company that the representative is no longer a representative;
 - (ix) is absent for:
 - (A) 3 consecutive Board Meetings without approval from the Board; or
 - (B) 3 Board Meetings in the same Financial Year; or
 - (x) becomes ineligible to be a Director of the Company under the Corporations Act or the ACNC Act.
- (b) Subject to Clauses 9.1 and 9.2, the Board may at any time appoint a person qualified to be a Director to fill a casual vacancy of:
 - (i) the existing Appointed Directors; or
 - (ii) the existing Elected Directors.
- (c) Subject to Clause 9.6, an Appointed Director appointed under Clause 9.7(b)(i) holds office for the term specified by the Board.
- (d) An Elected Director appointed under Clause 9.7(b)(ii) holds office until the termination of the next Annual General Meeting and is then eligible for re-election at that Annual General Meeting in accordance with Clause 9.5.

9.8 Insufficient Directors

- (a) In the event of a vacancy, or vacancies, in the office of a Director, the Board may act, but if the number of Directors is not sufficient to constitute a quorum at a Board Meeting or is less than the Required Minimum, they may act only for the purpose of:
 - (i) filling vacancies to raise the number of Directors to the Required Minimum;
 - (ii) increasing the number of Directors to a number sufficient to constitute a quorum; or
 - (iii) calling a General Meeting,but for no other purpose.
- (b) If the entire Board resigns, the Directors who have resigned must continue to act until their successors are appointed at a General Meeting to be called for that purpose.

9.9 Nomination Committee

- (a) The Board shall establish a Nomination Committee to:
 - (i) identify and assess the necessary and desirable skills, knowledge, experience and diversity of the Board and the Directors;
 - (ii) consider and make a recommendation on the desirable skills and experience of any proposed Appointed Director; and
 - (iii) consider and make a recommendation on any application for extension of term received by the Board under Clause 9.6(f).
- (b) The Nomination Committee shall comprise:
 - (i) the Chairman (unless the Chairman's position is under consideration);
 - (ii) the CEO;
 - (iii) two Directors (excluding any individual whose term of office is currently under consideration) appointed to the Nomination Committee by the Board; and
 - (iv) an individual appointed by the Board and independent to the Board.
- (c) A quorum of the Nomination Committee is 4.
- (d) The Nomination Committee may consider and make a recommendation to the Board on the appointment or re-appointment of any proposed Appointed Director having regard to:
 - (i) the overall composition of the Board;
 - (ii) the expertise and experience required by the Board and the Company;

- (iii) the expertise, experience and unique skills of the proposed Appointed Director;
 - (iv) the character, criminal record and bankruptcy history of the proposed Appointed Director; and
 - (v) the availability of persons with suitable qualifications and expertise.
- (e) The Nomination Committee may consider and make a recommendation to the Board on the extension of the term of any Director having regard to:
- (i) the overall composition of the Board;
 - (ii) the expertise and experience required by the Board and the Company;
 - (iii) the expertise, experience and unique skills of that Director applying for an extension of his or her term of office;
 - (iv) the attendance, contribution and participation of that Director at Board Meetings and the observance of protocols of the Board by that Director; and
 - (v) the availability of persons with suitable qualifications and expertise as a replacement of that Director.
- (f) Upon notification from the Board regarding the proposed appointment or re-appointment of an Appointed Director, the Chairman may convene a meeting of the Nomination Committee to enable the Nomination Committee to make a recommendation to the Board on the proposed appointment in accordance with Clauses 9.9(a)(ii) and 9.9(d).
- (g) Upon notification from the Board regarding the receipt of an application in accordance with Clause 9.6(f), the Chairman may convene a meeting of the Nomination Committee to enable the Nomination Committee to make a recommendation to the Board on the application for extension in accordance with Clauses 9.9(a)(iii) and 9.9(e).
- (h) The Nomination Committee must communicate any recommendation in writing to the Board within 2 weeks of the recommendation being made and notice must be provided to the Members at the following General Meeting if the Nomination Committee has exercised its discretion to make a recommendation regarding:
- (i) the proposed appointment or re-appointment of an Appointed Director; or
 - (ii) the extension of a Director's term.
- (i) An individual whose term has been recommended for extension must still go through the necessary process to be elected or appointed to the relevant position in accordance with the Constitution.

9.10 Chairman

- (a) The Board must elect a Director as the Company's Chairman.

- (b) The Chairman will preside at and chair all Board Meetings and General Meetings he or she attends.
- (c) The Board may appoint an alternate Director as the Chairman of a meeting or part of a meeting if the Chairman notifies the Board that he or she is unwilling or unable to chair the meeting or needs to step aside due to a conflict of interest.
- (d) The Chairman has a deliberative vote and a casting vote in the event of a tied vote.

10. Powers of Directors

10.1 Powers of Directors

- (a) The Directors are responsible for:
 - (i) managing and directing the activities of the Company to achieve the Objects;
 - (ii) doing any act or thing that it considers necessary or prudent to insure and protect the Company and its property; and
 - (iii) overseeing the Public Fund Committee and its management of the Public Fund.
- (b) The Directors may use all the powers of the Company except for powers that, under the Corporations Act or this Constitution, may only be used by Members.
- (c) The Directors cannot remove a Director or an Auditor. Directors and Auditors may only be removed by a Members' resolution at a General Meeting.

10.2 Delegation of Directors' powers

- (a) The Directors may delegate any of their powers and functions to a committee, a Director, an employee of the Company or any other person, as they consider appropriate.
- (b) The delegation must be in writing, with the party receiving the delegation to be provided with a copy and the delegation recorded in the Company's minute book.
- (c) Delegations may be amended and cancelled by the Board, using the same procedure set out in Clause 10.2(b).

10.3 Payments to Directors

- (a) The Company must not pay fees to a Director for acting as a Director.
- (b) The Company may:
 - (i) pay a Director for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done; or

- (ii) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.
- (c) Any payment made under Clause 10.3 must be approved by the Board.

10.4 Execution of documents

The Company may execute a document without using a common seal if the document is signed by:

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

11. Duties of Directors

11.1 Duties of Directors

The Directors must comply with their duties as Directors under legislation and common law, and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
- (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in Clause 3.1;
- (c) not to misuse their position as a Director, such as for personal gain or influence;
- (d) not to misuse information they gain in their role as a Director, such as for personal gain or influence;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in Clause 11.2;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

11.2 Conflicts of interest

- (a) A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a Board Meeting (or that is proposed in a circular resolution):
 - (i) to the other Directors; or
 - (ii) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.

- (b) The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- (c) Each Director who has a material personal interest in a matter that is being considered at a Board Meeting (or that is proposed in a circular resolution) must not, except as provided under Clause 11.2(d):
 - (i) be present at the meeting while the matter is being discussed; or
 - (ii) vote on the matter.
- (d) A Director may still be present and vote if:
 - (i) their interest arises because they are a Member of the Company, and the other Members have the same interest;
 - (ii) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company;
 - (iii) their interest relates to a payment by the Company under Clause 19 (Indemnity, insurance and access), or any contract relating to an indemnity that is allowed under the Corporations Act;
 - (iv) the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter; or
 - (v) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (A) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
 - (B) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

11.3 Committees

- (a) The Board may appoint committees from within the Board, which may also include independent persons, for any purpose it considers fit and appropriate in fulfilling its role of managing the Company's business.
- (b) A committee may invite other Members to attend any committee meeting, where the committee considers that those individuals have the experience, skills and knowledge to contribute to the relevant committee meeting.
- (c) Committees created by the Board are responsible for carrying out the purpose and role determined by the Board and must report and provide minutes of their meetings to the Board.
- (d) Each committee created by the Board will have the power and authority delegated to it by the Board but that power and authority must not exceed the power and authority vested in the Board itself.

- (e) Without limiting Clause 11.3(d), the Board may authorise a committee to incur expenditure up to the amount specified by the Board and if it does so, the committee must report to the Board as to the amounts expended.
- (f) If it considers it appropriate to do so, the Board may dissolve, re-constitute or amend the purpose and role of a committee at any time.

11.4 Advisory Committees

- (a) The Board may form advisory committees for the purpose of advising the Board on any matter or for any purpose it considers fit and appropriate.
- (b) An advisory committee must include at least one Director. The other members of the advisory committee must be persons with appropriate experience, skills and knowledge to contribute to the deliberations of the advisory committee.
- (c) Advisory committees created by the Board must perform the duties assigned to them by the Board and must report back to the Board and provide minutes of each meeting of the Board.
- (d) Each advisory committee created by the Board will perform an advisory role only and will have no power to make decisions on behalf of the Board or otherwise binding on the Company.
- (e) If it considers it appropriate to do so, the Board may dissolve, re-constitute or amend the purpose and role of an advisory committee at any time.

12. Board Meetings

12.1 Frequency

The Board must meet at least 5 times every year, or as otherwise determined necessary by the Board. Board Meetings will be held at the time and place determined by the Secretary and advised to the Directors at least 10 days in advance unless the Board agrees otherwise.

12.2 Special Meetings

Special meetings of the Board must be called by the Secretary on the direction of the Chairman, or on receipt of a requisition requesting a special meeting signed by not less than 3 Directors. At least three Business Days' notice of all special meetings must be given to Directors.

12.3 Quorum

The quorum at all Board Meetings will be half the total membership of the Board, all of whom must be eligible to attend and vote.

12.4 Voting at Board Meetings

- (a) Each Director is entitled to one vote on every motion and all motions must be decided by a majority of votes.
- (b) In the event of an equality of votes on a resolution at a Board Meeting, the Chairman has a casting vote on that resolution in addition to any vote the

Chairman has in his or her capacity as a Director in respect of that resolution.

12.5 Board Meeting Procedures

Subject to this Constitution, the Board must determine the procedure and order of business at its meetings.

12.6 Using technology to hold Board Meetings and committee meetings

- (a) The Board and committees established by the Board may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors or the members of the Committee.
- (b) The Directors' or committee members' agreement may be a standing (ongoing) one.
- (c) A Director or a committee member may only withdraw their consent within a reasonable period before the meeting.

12.7 Board Meeting minutes

The Board Meeting minutes are the property of the Board and are confidential.

12.8 Board circular resolutions

- (a) The Board may pass a circular resolution without a Board Meeting being held.
- (b) A circular resolution is passed if all the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in Clause 12.8(c) or Clause 12.8(d).
- (c) Each Director may sign:
 - (i) a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - (ii) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- (d) The Company may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- (e) A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in Clause 12.8(c) or Clause 12.8(d).
- (f) The Secretary must inform Directors as soon as possible if:
 - (i) a circular resolution has been passed;
 - (ii) one or more Directors has stated they are not in agreement with a proposed circular resolution; or

- (iii) after 10 days if a response to a proposed circular resolution has not been received from one or more Directors.
 - (g) A circular resolution which has passed should be incorporated in the minutes of the next Board Meeting as a circular resolution.
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13. Secretary

13.1 Appointment of Secretary

- (a) The Board must appoint, on such terms and conditions as the Board determines, a Secretary for the Company, who may also be the CEO.
- (b) The person appointed under Clause 13.1(a) must:
 - (i) have appropriate skills and experience as determined by the Board to be desirable for performance of that role; and
 - (ii) have given the Company their signed consent to act as Secretary.
- (c) The Board may, by resolution of the Board:
 - (i) suspend or remove a Secretary from that office at any time, with or without cause; and
 - (ii) may revoke or vary the appointment of a Secretary.
- (d) The Board may appoint a person as an acting Secretary or as a temporary substitute for a Secretary.

13.2 Role of Secretary

The role of the Secretary includes:

- (a) day to day management and administration of the Board and acting in accordance with the directions of the Board;
 - (b) keeping the Board properly and regularly informed on all matters affecting the management and administration of the Company;
 - (c) maintaining a Register of Members; and
 - (d) maintaining the minutes and other records of General Meetings (including notices of meetings), Board Meetings and circular resolutions.
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14. Chief Executive Officer

14.1 Appointment of Chief Executive Officer

- (a) The Board may appoint a CEO, who must be a Member, on any terms and conditions and with any restrictions as it thinks fit.
- (b) The person appointed under Clause 14.1(a) must:
 - (i) have appropriate skills and experience as determined by the Board to be desirable for performance of that role; and

- (ii) have given the Company their signed consent to act as CEO.
- (c) The Board may suspend or remove a CEO from that office at any time, with or without cause, subject to any written agreement between the CEO and the Company.
- (d) The Board may appoint a person as an acting CEO or as a temporary substitute for a CEO.
- (e) The CEO is not a member of the Board, but may attend Board Meetings except where the Board otherwise requests.

14.2 Role of Chief Executive Officer

The role of the CEO includes responsibility for the running, management and administration of the Company subject to the direction and control of the Board, including such other tasks as shall be required by the Board from time to time, in accordance with the Objects and the By-Laws.

15. Treasurer

15.1 Appointment of Treasurer

- (a) The Board must appoint, on such terms and conditions as the Board determines, a Treasurer for the Company.
- (b) The person appointed under Clause 15.1(a) must:
 - (i) have appropriate skills and experience as determined by the Board to be desirable for performance of that role; and
 - (ii) have given the Company their signed consent to act as Treasurer.
- (c) The Board may suspend or remove a Treasurer from that office at any time, with or without cause.
- (d) The Board may appoint a person as an acting Treasurer or as a temporary substitute for a Treasurer.

15.2 Role of Treasurer

The role of the Treasurer includes:

- (a) maintaining the financial records referred to in Clause 16.2 in accordance with that Clause;
- (b) receiving all monies on behalf of the Company;
- (c) issuing receipts and paying all such monies into the Company's bank account/s as required under relevant legislation and rules;
- (d) working with and acting as an advisor to the Public Fund Committee to maintain the Public Fund and the financial records of the Public Fund;
- (e) maintaining an assets register; and

- (f) submitting an annual financial report, balance sheet and such other information as the Board may require at each Annual General Meeting and at any other time required by the Board.
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16. Minutes and records

16.1 Minutes and records

- (a) The Company must, within one month, make and keep the following records:
 - (i) minutes of proceedings and resolutions of General Meetings;
 - (ii) a copy of a notice of each General Meeting;
 - (iii) minutes of proceedings and resolutions of Board Meetings (including meetings of any Committees); and
 - (iv) minutes of circular resolutions of Directors.
- (b) Subject to the Corporations Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the minutes, accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).
- (c) The Board must ensure that minutes of a General Meeting or a Directors' meeting are provided within a reasonable time after the meeting and signed at the next Board Meeting by:
 - (i) the Chairman of the relevant meeting; or
 - (ii) the Chairman of the next meeting.
- (d) The Board must ensure that minutes of the passing of a circular resolution (of Members or Directors) are signed by a Director within a reasonable time after the resolution is passed.

16.2 Financial and related records

- (a) The Company must make and keep written financial records that:
 - (i) are kept in accordance with the applicable law and any relevant standards;
 - (ii) correctly record and explain its transactions and financial position and performance; and
 - (iii) enable true and fair financial statements to be prepared and to be audited.
- (b) The Company must also keep written records that correctly record its operations.
- (c) The Company must retain its records for at least 7 years.
- (d) The Board must take reasonable steps to ensure that the Company's records are kept safe.

17. By-Laws

- (a) The Board may pass a resolution to make, amend or revoke By-Laws to give effect to this Constitution.
- (b) Members and Directors must comply with By-Laws as if they were part of this Constitution.
- (c) The Members may, by passing a Special Resolution at a General Meeting, amend or revoke By-Laws.

18. Notice

18.1 What is notice

- (a) Anything written to or from the Company under any Clause in this Constitution is written notice and is subject to Clauses 18.2 to 18.4, unless specified otherwise.
- (b) Clauses 18.2 to 18.4 do not apply to a notice of proxy under Clause 8.13.

18.2 Notice to the Company

Written notice or any communication under this Constitution may be given to the Company, the Board or the Secretary by:

- (a) delivering it to the Company's registered office;
- (b) posting it to the Company's registered office or to another address notified by the Company to the Members as the address for notices;
- (c) sending it to an email address or other electronic address notified by the Company to the Members as the Company's email address or other electronic address; or
- (d) sending it to the fax number notified by the Company to the Members as the Company's fax number.

18.3 Notice to Members

- (a) Written notice or any communication under this Constitution may be given to a Member:
 - (i) in person;
 - (ii) by posting it to, or leaving it at the address of the Member in the Register of Members or an alternative address (if any) nominated by the Member for service of notices;
 - (iii) sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any);
 - (iv) sending it to the fax number nominated by the Member as an alternative address for service of notices (if any); or

- (v) if agreed to by the Member, by notifying the Member at an email or other electronic address nominated by the Member, that the notice is available at a specified place or address (including an electronic address).
- (b) If the Company does not have an address for the Member, the Company is not required to give notice in person.

18.4 When notice is taken to be given

A notice:

- (a) delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the second Business Day after it is posted; and
- (c) sent by email, fax or other electronic method, is taken to be given on the Business Day after it is sent.

19. Indemnity, insurance and access

19.1 Indemnity

- (a) The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company, provided that the loss or liability does not arise through the officer's own negligence, default, wilful breach of duty or breach of trust.
- (b) In this Clause, 'officer' means a Director, Secretary, Treasurer, CEO or a member of the Public Fund Committee and includes a Director, Secretary, Treasurer, CEO or a member of the Public Fund Committee after they have ceased to hold that office.
- (c) In this Clause, 'to the relevant extent' means:
 - (i) to the extent that the Company is not precluded by law (including the Corporations Act) from doing so, and
 - (ii) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- (d) The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

19.2 Insurance

To the extent permitted by law (including the Corporations Act), and if the Board considers it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.

19.3 Directors' access to documents

- (a) A Director has a right of access to the financial records of the Company at all reasonable times.
- (b) Subject to Clause 19.3(c), the Company must give a current or former officer reasonable access to documents which were either prepared by or provided to the officer during the time he or she held office as a Director, Secretary, Treasurer, CEO or member of the Public Fund Committee which are relevant to:
 - (i) the officer's holding of that office/s; or
 - (ii) any Relevant Proceedings which the officer reasonably anticipates may be brought against him or her in relation to matters arising in the course of the officer acting in connection with the affairs of the Company or otherwise concerning or relating to the officer's holding of that office/s.
- (c) The Company need not comply with Clause 19.3(b) if:
 - (i) the Company, acting reasonably, is not satisfied that the document sought is material to the Relevant Proceedings; or
 - (ii) the Company considers that to do so would have a material adverse effect on the Company.

20. Winding up

20.1 Voluntary Winding Up

The Company may be wound up voluntarily by a Special Resolution passed at a General Meeting.

20.2 Surplus Property

- (a) If upon winding up or dissolution of the Company or the Company ceasing to be endorsed as a Deductible Gift Recipient in the form of a registered environmental organisation there remains after satisfaction of all its debts and liabilities any money or property, that money or property must not be paid to or distributed among the Members, but is to be transferred or distributed or given to another incorporated association or associations or a charitable entity:
 - (i) that has objects similar to those of the Company;
 - (ii) is approved as a Deductible Gift Recipient; and
 - (iii) which prohibits distribution of its income and property among its members and directors (if any) to an extent at least as great as is imposed on the Company by Clause 20.1.
- (b) The decision to transfer the Company's property to another incorporated association, associations or charitable entity under Clause 20.2(a) will be determined by a Special Resolution passed at the same General Meeting referred to in Clause 20.1.