



SAVING OUR ENDANGERED FLORA & FAUNA

**Constitution of  
Foundation for Australia's Most  
Endangered Species Limited**

**A company limited by guarantee**

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ABN 79 154 823 579

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## OPERATIVE PROVISIONS

### 1. PRELIMINARY

#### Definitions

1.1 In this Constitution, unless the context otherwise requires:

**\$** means Australian dollars.

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

**Associate Member** means a Member who is entered in the Membership Register as an Associate Member and whose rights, privileges and obligations include those set out in clause 2.15.

**Board** means the Directors acting as a Board of Directors.

**Company** means Foundation for Australia's Most Endangered Species Limited CAN [ACN to be provided by ASIC on registration as public company limited by guarantee].

**Constitution** means the Constitution of the Company for the time being in force.

**Department** means, at the date of registration of the Company, the Department of Sustainability, Environment, Water, Population and Communities, or any other government department responsible for maintaining the Register from time to time.

**Directors** means the directors of the Company from time to time.

**Environment Minister** means the Minister administering section 1 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth).

**Environmental Register** means the Register of Environmental Organisations kept by the Department.

**Financial Year** has the same meaning as in the Act.

**Gift Fund** means the Foundation for Australia's Most Endangered Species Gift Fund, established and maintained pursuant to clause 17.1.

**Gift Fund Committee** means the committee recommended by the Board under clause 12.18.

**Member** means a person who is granted Membership in the Company in accordance with clause 2.7, and is entered in the Membership Register

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as a Member, including the Voting Members and the Associate Members.

**Membership** means membership of the Company and, for clarity, includes (without limitation) both Members and Associate Members.

**Membership Register** means the register of Members and Associate Members to be kept pursuant to the Act.

**Month** means a calendar month.

**Office** means the registered office for the time being of the Company Officer has the meaning given to "officer of a corporation" in section 9 of the Act.

**Ordinary Resolution** means a resolution of the Members passed by a simple majority of the votes cast by Members entitled to vote on the resolution.

**Principal Purposes** means the purposes of the Company set out in clause 1.6 and 1.7.

**Related Body Corporate** has the same meaning as in the Act.

**Replaceable Rules** means the provisions of the Act which would but for this Constitution apply as replaceable rules under section 141 of the Act.

**Seal** means the common seal of the Company (if the Board resolves to adopt a common seal) or, where appropriate, the duplicate seal or the official seal.

**Secretary** means a person appointed as secretary of the Company from time to time.

**Special Purpose Subscription** means a subscription payable by a Member for a special purpose as determined by the Board and approved by the Members in accordance with clause 2.17.

**Special Resolution** means a resolution of Members passed by at least 75% of the votes cast by Members entitled to vote on the resolution, unless otherwise required by the Act or this Constitution.

**Subscription** means an annual subscription fee or a Special Purpose Subscription.

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

**Voting Members** means a Member who is entered in the Membership Register as a Voting Member and whose rights, privileges and obligations include those set out in clause 2.15 and 2.16.

### The Act definitions

1.2 In this Constitution, unless the context otherwise requires, if an expression is defined in, or given a meaning for the purposes of the Act, that expression has the same definition or meaning in this Constitution to the extent that it relates to the same matter for which it is defined or given a meaning in the Act.

### Replaceable rules not to apply

1.3 To the full extent permitted by the Act, those provisions of the Act which apply as replaceable rules are displaced by this Constitution in relation to the Company and are replaced by the terms of this Constitution.

### Constitution subject to the Act

1.4 This Constitution is subject to the Act. Where there is any inconsistency between a clause of this Constitution and the Act, the Act prevails to the extent of the inconsistency.

### Interpretation

1.5 In this Constitution, unless the context otherwise requires:

- (a) a reference to:
  - (i) the singular includes the plural and vice versa;
  - (ii) a gender includes every gender;
  - (iii) the Act, any section, regulation or schedule of the Act or any other legislation is a reference to that law as amended, consolidated, supplemented or replaced;
  - (iv) in writing or written includes printing, lithography, photography and other means of representing or reproducing words in a visible form;
  - (v) paid up or paid includes credited as paid up or paid;
  - (vi) dividend includes bonus;
  - (vii) any person includes a reference to any individual, company, body corporate, association, partnership, firm, joint venture, trust or government agency;
  - (viii) a person includes the person's successors and legal personal representatives;
  - (ix) a body (including an institute, association, authority or government agency) whether statutory or not:
    - (A) which ceases to exist; or
    - (B) whose powers are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (b) the words including or includes means including but not limited to or including without limitation;
- (c) if a period occurs from, after, until or before a day of an act or event, it excludes that day; and
- (d) headings are for convenience only and must be ignored in interpreting this Constitution.

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## Principal Purposes

- 1.6 The Company exists for the public benefit and to support the protection and enhancement of the natural environment and in particular, Australia's native flora and fauna.
- 1.7 Without limiting clause 1.6, the Principal Purposes of the Company include:
- (a) establishing and maintaining the Gift Fund for receiving gifts and donations to pursue the Principal Purposes;
  - (b) ensuring that Australia's natural habitat remains as diverse as possible;
  - (c) raising and effectively directing funds towards saving Australia's most endangered native species;
  - (d) promoting and alerting the community to the plight of Australia's most endangered native flora and fauna species;
  - (e) promoting, motivating and educating the community to take action to prevent the extinction of Australia's most endangered native species;
  - (f) doing all other things as may be incidental and ancillary to the attainment of these Principal Purposes; and
  - (g) exercising any powers that the Company has by having the legal capacity of a natural person, including by performing any act or function which it is authorised or required to do by any law.
- 1.8 The Company must pursue only the Principal Purposes set out in clauses 1.6 and 1.7.
- 1.9 Clause 1.8 does not limit the legal capacity and powers of the Company, as set out in section 124 of the Act.

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## Income and property

- 1.10 Subject to clause 1.12, the income and property of the Company, including the Gift Fund, wherever derived will be applied solely towards promoting the Principal Purposes and no portion may be distributed, paid or transferred (whether directly or indirectly and whether by way of dividend, bonus or by way of profit) to the Members, Directors or any other beneficiaries.
- 1.11 Any allocation of funds or property to other persons or organisations will be made in accordance with the Principal Purposes and not be influenced by the preference of the donor.
- 1.12 Clause 1.10 does not prevent the payment in good faith of reasonable and proper:
- (a) remuneration to any Officer or employee of the Company, in return for services actually rendered to the Company;
  - (b) payment for goods and services supplied in the ordinary and usual course of business, including charges for goods hired by the Company from a Member;

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- (c) remuneration to any Director in return for any professional services actually rendered to the Company pursuant to the terms of a contract executed under clause 14.6;
- (d) reimbursement of travelling and other expenses incurred by Directors;
- (e) interest to a Member or Director on money advanced by the Member or Director to the Company or otherwise owing by the Company to the Member or Director; or
- (f) rent for premises leased by any Member or Director to the Company, where approved by the Board in accordance with the terms of this Constitution.

## 2 MEMBERSHIP

### Minimum number of Members

- 2.1 Subject to the Tax Act or any other change in law, for so long as the Company maintains the Gift Fund, its Membership must consist of:
- (a) principally bodies corporate; or
  - (b) at least 50 Members who are individuals that are Voting Members; or
  - (c) where the Environment Minister has determined that, because of special circumstances, the Company does not have to meet the requirements in clause 2.1(a) or 2.1(b), at least one Voting Member.

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### Categories of Membership

- 2.2 The Membership will consist of:
- (a) Voting Members;
  - (b) Associate Members; and
  - (c) any other class of Membership determined by the Board from time to time.

### Application for Membership

- 2.3 Every applicant for Membership must:
- (a) be an individual, partnership, corporation or organisation that:
    - (i) is interested in and agrees to support the Principal Purposes of the Company;
    - (ii) agrees to abide by this Constitution as amended from time to time; and
    - (iii) meets any additional criteria established for Membership in the Company as may be adopted by the Board;
  - (b) subject to clause 2.4 and 2.5 as it relates to Voting Members, sign an application for Membership in the form prescribed by the Directors at that time; and
  - (c) as a condition of admission, pay any Subscription prescribed by the Board from time to time for the relevant category of Membership.

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### Nomination for Voting Membership

- 2.4 A person who is not a Voting Member will not be admitted to Voting Membership unless:
- (a) they are nominated as provided in clause 2.5; and

(b) their admission as a Voting Member is approved by the Board in its absolute discretion.

2.5 A nomination of a person for Voting Membership:

- (a) may only be made by a Voting Member;
- (b) must be seconded by a second Voting Member;
- (c) must be made in writing in the form determined by the Directors; and
- (d) must be lodged with the Secretary.

2.6 As soon as is practicable after the receipt of a nomination for Voting Membership, the Secretary will refer the nomination to the Board.

2.7 Upon a nomination being referred to the Board, the Board will determine whether to approve or to reject the nomination.

2.8 Upon a nomination being approved by the Board, the Secretary will, as soon as practicable, notify the nominee in writing that the nominee is approved for Voting Membership and request payment within the period of 28 days after receipt of the notification of any Subscription payable, as determined by the Board.

2.9 If the applicant is rejected by the Board, the Secretary will notify the applicant and need not include any reason why the application was rejected. Any Subscription paid in advance will be refunded in full.

2.10 For the avoidance of doubt, an application for Associate Membership is not subject to the nomination procedure set out in clause 2.4 and 2.5.

### **Entry of nominee's name into the Membership Register**

2.11 The Secretary will, upon payment of the amounts referred to in clause 2.3 within the period referred to in that clause, enter the nominee's name in the Membership Register and, upon the name being so entered, the nominee becomes a Member.

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## Joint Members

- 2.12 Two or more persons registered as a Member are deemed joint tenants with benefits of survivorship, subject to the following provisions in respect of that joint Member:
- (a) each person forming part of the joint Member is jointly and severally liable for all payments required to be made by a Member (including all Subscriptions);
  - (b) if a person forming part of a joint Member dies, the survivor or survivors are the only person or persons recognised by the Company as being the Member; and
  - (c) delivery of a notice to any person forming part of a joint Member is sufficient delivery to all the joint Members.

## More than three persons registered

- 2.13 If more than three persons are noted in the Membership Register as a joint Member, or a request is made to register more than three persons as a joint Member then (except in the case of executors or trustees or administrators of a deceased Member), the first three persons named in the Membership Register are deemed to be the Member and no other persons will be regarded by the Company as a Member for any purpose.

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## Membership rights

- 2.14 A right, privilege, or obligation of a person by reason of his Membership:
- (a) is not capable of being transferred or transmitted to another person; and
  - (b) terminates upon the cessation of Membership (except as otherwise provided in this Constitution).

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## Rights and privileges of Membership

- 2.15 Without limiting any other rights conferred on Members:
- (a) Voting Members have the right to receive notice of, attend and vote at any general meeting of the Company; and
  - (b) Associate Members have the right to receive notice of and to attend, but not the right to vote at, any general meeting of the Company.

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## Limited tenure of Voting Membership

- 2.16 Each Voting Member will remain a Member only until the end of the third Financial Year following entry in the Membership Register under clause 2.11, at which time the Voting Member must (if it so chooses) re-apply for Voting Membership in accordance with clause 2.3 to 2.5.

## Subscriptions

- 2.17 The Subscriptions payable by Members of the Company may be prescribed by the Board from time to time in their absolute discretion.
- 2.18 All annual subscription fees will become due and payable in advance on the first day of July every year.

- 2.19 Any Special Purpose Subscription must be paid within two Months after receipt of a notification given to such Members that a Special Purpose Subscription is payable by that Member.
- 2.20 Without limiting clause 2.17, in determining that Subscriptions should be payable by Members, the Board may provide for different subscriptions for each category of Membership and different subscriptions within a particular category based on such factors appearing to the Board to justify differential subscriptions.
- 2.21 If a Member is admitted to Membership during a Financial Year, a Subscription may, at the discretion of the Board, be calculated proportionately for the part of the Financial Year remaining in whole Months plus the Month in which the Member was admitted to Membership.

### Register of Members

- 2.22 The secretary will keep and maintain the Membership Register in which will be entered the full name, address and date of entry of the name of each Member and the register will be available for inspection by Members at the Office.

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### Resignation or expulsion of Member

- 2.23 A Member who has paid all moneys due and payable to the Company may cease their Membership by giving one Month's notice in writing to the Secretary. On expiration of the notice period, the Member will cease to be a Member. The Member will remain liable for any Subscription and all other moneys due by them to the Company and unpaid as at the date of resignation and for any sum for which they are liable under clause 2.30.
- 2.24 Upon the expiration of a notice given under clause 2.23, the Secretary will make in the Membership Register an entry recording the date on which the relevant Member ceased to be a Member.
- 2.25 Subject to these rules, the Board may by resolution:
- (a) expel a Member; or
  - (b) suspend a Member from Membership for a specified period; who has:
  - (c) has refused or neglected to comply with this Constitution; or
  - (d) engaged in conduct which is, in the determination of the Board, unbecoming a Member, prejudicial to the interests of the Company or contrary to the Principal

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### Purposes

- 2.26 If a Subscription of any Member remains unpaid for three Months after it becomes due, the Secretary will give notice to the Member of that fact. If the Subscription remains unpaid for 14 days after the date of the notice, the Directors may resolve to expel the Member from membership of the Company and remove the Member's name from the Register.
- The Directors may reinstate the Member on payment of all arrears if the Directors think fit to do so.
- 2.27 Where the Board passes a resolution under clause 2.25 or 2.26, the Secretary will, as soon as practicable, cause to be served on the Member a notice in writing

setting out the resolution of the Board and the grounds on which it is based.

### Other grounds for cessation of membership

- 2.28 A Member's membership of the Company will automatically cease:
- (a) if a Voting Member does not vote at two consecutive annual general meetings of the Company (whether in person or by proxy) or the Company does not have any correspondence (whether written or verbal) with that Voting Member for a period of 12 Months;
  - (b) in the case of a Member who is a natural person on the date that the Member:
    - (i) dies; or
    - (ii) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the laws relating to mental health; or
  - (c) in the case of a Member which is a body corporate on the date that:
    - (i) a liquidator is appointed in connection with the winding up of the Member; or
    - (ii) an order is made by a court for the winding-up or deregistration of the Member.

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### Limited Liability

2.29 The liability of the Members is limited.

### Members' guarantee

- 2.30 If the Company is wound up, anyone who is a Member when the Company is wound up or who ceases to be a Member within one year before the Company is wound up must, on winding up, contribute to the Company's property the lesser of:
- (a) the amount required for:
    - (i) payment of the Company's debts and liabilities that were contracted before the person ceased to be a Member;
    - (ii) the costs, charges and expenses of the winding up;
  - and
  - (iii) adjustment of the rights of contributors between themselves; and
  - (b) \$20.00.

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### 3. GENERAL MEETINGS

#### Annual General Meetings

- 3.1 Subject to the Act:
- (a) the Company must hold its first annual general meeting by the end of the calendar year of the registration of the Company; and
  - (b) subsequent annual general meetings must be held at least once in every calendar year and within five months after the end of the financial year of the Company.
- 3.2 The annual general meeting will be specified as such in the notice convening it and the business of an annual general meeting may include:
- (a) receiving and considering the statement of financial performance, statement of financial position, the reports of the Directors and of the auditors, and the statement of the Directors;
  - (b) electing Directors;
  - (c) adopting the remuneration report;
  - (d) appointing the auditor, and
  - (e) fixing the remuneration of the auditor, whether or not this is stated in the notice of meeting.
- 3.3 The Directors may convene a general meeting of the Company whenever they think fit.

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#### Venue and conduct of general meetings

- 3.4 Subject to section 249R of the Act, annual general meetings and general meetings may be held within or outside Australia.

#### Deemed holding of annual general meeting

- 3.5 An annual general meeting is deemed to have been held if the Company has held a general meeting at which resolutions have been passed dealing with all matters required to be dealt with at an annual general meeting, but this does not affect the obligation to hold an annual general meeting as required by the Act or this Constitution.

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#### Members may requisition meeting

- 3.6 Voting Members may requisition the holding of a general meeting in accordance with the Act and the Directors must convene a general meeting in accordance with the time limits under the Act.

#### Notice of general meeting

- 3.7 Notice of every annual general meeting, general meeting or meeting of any class of Members must be given in the manner provided by this Constitution and the Act to the Members and those persons who are otherwise entitled under this Constitution to receive notices.

#### Directors entitled to notice of meeting

- 3.8 A Director is entitled to receive notice of and to attend all general meetings and all separate meetings of any class of Members, and is entitled to speak at those meetings.

### **Contents of notice of general meeting**

- 3.9 Every notice convening a general meeting must include or be accompanied by all information required by the Act and must at least:
- (a) set out the place, the day and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner);
  - (b) subject to clause 3.2, state the general nature of the business to be transacted at the meeting and any Special Resolution to be proposed;
  - (c) include a statement that:
    - (i) a Voting Member entitled to attend and vote is entitled to appoint a proxy; and
    - (ii) a proxy must be a Voting Member;
  - (d) be accompanied by an instrument of proxy in the form described in this Constitution or in any other form as the Directors may determine or accept; and
  - (e) include information about how instruments of proxy can be delivered to the Company.

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### **Omission to give notice**

- 3.10 Except as prescribed by the Act, the accidental omission to give notice of a meeting to any Member or the non-receipt of notice of a meeting by any Member does not invalidate any of the proceedings at that meeting.

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### **Changes to general meeting**

- 3.11 If the Directors consider that:
- (a) a general meeting has become unnecessary;
  - (b) the postponement of a general meeting is in the interests of Members;
  - (c) the venue for a general meeting is no longer appropriate, convenient or practical; or
  - (d) a change is otherwise necessary to conduct the general meeting efficiently, the Directors may:
    - (e) change the venue for the general meeting;
    - (f) cancel the general meeting;
    - (g) postpone the general meeting; and/or
    - (h) make any change they consider necessary to the efficient conduct of the general meeting.
- 3.12 The only business that may be transacted at a general meeting, the holding of which is postponed, is the business specified in the original notice convening the meeting.

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## **4. PROCEEDINGS AT GENERAL MEETING**

### **Member deemed to be present**

- 4.1 A Member may attend a general meeting at which it is entitled to be present, and is deemed to be present, in any of the following ways:
- (a) in person;
  - (b) by attorney;
  - (c) by proxy;
  - (d) in the case of a Member which is a body corporate, by a representative appointed under section 250D of the Act.

### **Attorney of Member**

- 4.2 Any Member may appoint an attorney to act on its behalf at all meetings of the Company or all meetings of the Company during a specified period. Before the first meeting at which the attorney acts on the Member's behalf, the power of attorney validly appointing the attorney must be deposited at the Office or at any place specified in the notice convening that meeting.

### **Representative of body corporate**

- 4.3 Any Member that is a body corporate may, in accordance with the Act, by resolution of its Directors authorise any person to act as its representative at any meeting. That representative is then entitled to exercise the same powers as the body corporate appointing the representative could have exercised as a Member, if it were a natural person.

### **Quorum for general meeting**

- 4.4 No business may be transacted at any general meeting unless a quorum is present at the start of the business. A quorum is three Voting Members who are present at the meeting and entitled to vote on a resolution at the meeting.

### **No quorum**

- 4.5 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) any meeting convened on a requisition of Voting Members is dissolved; and
  - (b) any other meeting stands adjourned to the same day in the next week at the same time and place or to any other day, time and place as the Directors may appoint by notice to the Members. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, then those Voting Members who are present in person are deemed to be a quorum and may transact the business for which the meeting was called.

### **Chair of general meeting**

- 4.6 The chair of the Directors, or, in the chair's absence, the deputy chair (if any) will be entitled to take the chair at every general meeting. If there is no chair, or if at any meeting the chair is not present within 30 minutes after the time appointed for holding the

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meeting or if the chair is unwilling to act, the Directors present may choose a chair. If the Directors do not choose a chair, the Voting Members present must choose one of the Directors to be chair, and if no Director is present or willing to take the chair, the Voting Members must choose one of the Voting Members to be chair.

- 4.7 The chair may, in the case of a conflict of interest or otherwise in their discretion, appoint someone else (who need not be a Director) to chair one or more items of business or resolutions at a general meeting. While acting as chair the appointee may exercise all of the chair's powers and discretions. The chair resumes the chair after the appointment concludes.

### **Powers of chair**

- 4.8 The chair is responsible for the general conduct of and procedures at the general meeting.
- 4.9 The chair's decisions about general conduct and procedures is final.
- 4.10 At any general meeting, if:
- (a) the chair declares that a resolution has been carried, or carried by a particular majority, or not carried; and
  - (b) an entry to that effect is recorded in the minutes of proceedings of the Company, that declaration is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against that resolution.

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### **Adjournment of general meeting**

- 4.11 The chair of a general meeting may adjourn the meeting from time to time and from place to place, but no business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

### **Notice of adjourned meeting**

- 4.12 If any general meeting is adjourned for more than one Month, Members of the Company must be given notice of the adjournment in the same manner in which notice was, or ought to have been, given of the original meeting.

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## **5. VOTING**

### **Matters requiring a Special Resolution**

- 5.1 Any business which under the Act requires a Special Resolution will require a Special Resolution at any general meeting.

### **Resolution determined by majority**

- 5.2 At a general meeting all questions submitted to the meeting will be decided by an Ordinary Resolution except where a greater majority is required by clause 5.1, or elsewhere in this Constitution.

### **Casting vote of chair**



- 5.3 If an equal number of votes occurs on a show of hands or on a poll, the chair has a casting vote in addition to any votes to which the chair may be entitled as a Member, proxy, attorney or representative.

### Method of voting

- 5.4 Every resolution submitted to the meeting will, in the first instance, be determined by a show of hands unless, either before or on the declaration of the result of the vote on a show of hands, a poll is demanded under clause 5.7 or the Act.

### Voting by joint holders

- 5.5 A person who forms part of a joint Voting Member may vote at any meeting either personally or by proxy or by attorney or representative as if they were the Member.
- 5.6 If more than one person forming part of a joint Voting Member is present at any meeting (whether personally, by proxy or by attorney or by representative) and tenders a vote, only the vote of the person whose name appears first on the Membership Register will be counted.

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### Demand for poll

- 5.7 A poll may be demanded on any resolution by:
- the chair;
  - at least five Voting Members who are present; or
  - Voting Members who are present who hold not less than 5% of the total voting rights of all Voting Members having the right to vote on the resolution.

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### Conducting a poll

- 5.8 The chair will decide in each case the manner and the date and time in which a poll is taken.
- 5.9 In every case the chair must ascertain the number of votes attaching to the persons voting in favour of a resolution and by those voting against the resolution.
- 5.10 The chair will determine any dispute about admitting or rejecting a vote and that determination, made in good faith, will be final and conclusive.

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### Votes

- 5.11 On a show of hands and on a poll every person present as a Voting Member or as a duly authorised representative, proxy or attorney of a Voting Member will have one vote whether present in person or by proxy, attorney or representative.
- 5.12 A Member is not entitled to attend or vote at a general meeting unless all sums presently payable by that Member in respect of that Member's membership in the Company have been paid.



### **Objections to qualification to vote**

- 5.13 An objection may be raised to the qualification of a Voting Member only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- 5.14 Any such objection will be resolved by the chair of the meeting, whose decision is final.
- 5.15 A vote not disallowed pursuant to an objection is valid for all purposes.

### **Attorney of Voting Member**

- 5.16 Any Voting Member may appoint an attorney to act on the Voting Member's behalf at all meetings of the Company or all meetings of the Company during a specified period. Before the first meeting at which the attorney acts on the Voting Member's behalf, the relevant power of attorney must be deposited at the Office or at any place specified in the notice convening that meeting. At the first meeting and at any subsequent meeting to which the power of attorney may relate, the attorney must hand to the chair of the meeting a properly executed declaration of non-revocation of the power of attorney.

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## **6. PROXIES**

### **Instrument appointing proxy**

- 6.1 A proxy must be a Voting Member.
- 6.2 The instrument appointing a proxy must be in writing signed by the Voting Member or by the Voting Member's attorney properly authorised in writing, or, if the Voting Member is a body corporate, by its corporate representative or at least two of its Officers.

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### **Validity of appointment**

- 6.3 The instrument appointing a proxy and the original power of attorney (if any) under which it is signed or a certified copy of the power of attorney must be received by the Company at least 48 hours before the time for holding the meeting either by delivery to the Office, by facsimile received at a fax number at the Office or otherwise by any other means permissible under section 250B(3) of the Act.
- 6.4 An instrument appointing a proxy will only be valid for 12 Months from the date of its execution unless it states that it is valid for all meetings until revoked, except that any instrument may be used at any adjournment of the meeting for which it was originally intended.

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### **Validity of vote given in accordance with proxy**

- 6.5 Unless the Company has received written notice of the matter before the start or resumption of the Members' meeting at which a proxy or an attorney votes, a vote cast by the proxy or attorney will

be valid even if, before the proxy or attorney voted, the Voting Member:

- (a) dies;
- (b) is mentally incapacitated;
- (c) revokes the proxy's or attorney's appointment; or
- (d) revokes the authority under which the proxy was appointed by a third party.

### **Form of proxy**

6.6 Every instrument of proxy must specify the Voting Member's name and address, the Company's name, the proxy's name or the name of the office held by the proxy and the meetings at which the proxy may be used, and must otherwise comply with the provisions of section 250A of the Act.

6.7 The instrument of proxy may be worded so that a proxy is directed to vote either for or against each of the resolutions to be proposed. Any instrument of proxy deposited in accordance with this Constitution in which the name of the appointee is not filled will be deemed to be given in favour of the chair of the meeting to which it relates. The instrument of proxy may specify the proportion or number of votes that the proxy may exercise.

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## **7. RESOLUTIONS WITHOUT MEETINGS**

### **Where only one Member**

7.1 Where the Company has only one Member, any resolution may be passed without a general meeting being held if that Member (or being a corporation, its duly authorised representative or attorney) records the resolution and signs the record.

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## **8. DIRECTORS**

### **Number of directors**

8.1 The number of Directors must not be less than five nor more than 12. The Directors have the power at any time to increase the number of Directors.

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### **Residence of directors**

8.2 At least three of the directors must be natural persons who ordinarily reside within Australia.

### **Consent to act as Director**

8.3 Before being appointed as a Director a person must give the Company a signed consent to act as Director, which must be retained by the Company.

### **Member qualification**

8.4 A Director must be a Voting Member in the Company at the time of appointment.

### **Election of Directors by Company**

8.5 Directors must be elected by Ordinary Resolution.

### **Directors may fill casual vacancies or appoint additional Directors**

- 8.6 Despite clause 8.5, the Directors have power at any time and from time to time to appoint any other person as a Director either to fill a casual vacancy or as an addition to the Board provided that the total number of Directors must not at any time exceed the maximum number for the time being fixed by or under this Constitution.
- 8.7 Any Director, except the Chief Executive Officer (where he or she is a Director) appointed under clause 8.6 must retire from office at, and will be eligible for re-election at, the next annual general meeting following that Director's appointment.

### **Eligibility for election as a Director**

- 8.8 Except where a Director retires from the Board under this Constitution or a person is recommended for appointment by the Board, a Voting Member is only eligible for appointment as a Director by Ordinary Resolution, where the Company receives at its Office at least 30 business days before the relevant general meeting both:
- (a) a nomination of the person by a Voting Member; and
  - (b) a consent to that nomination signed by the Voting Member nominated for election as a Director.

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### **Auditor cannot be Director**

- 8.9 No auditor of the Company or partner or employee or employer of an auditor can be appointed as a Director or an alternate Director of the Company.

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## **9. DIRECTORS' TENURE OF OFFICE**

### **Directors' tenure of office**

- 9.1 Subject to clause 9.5, a Director must not hold office without re-election:
- (a) following the second annual general meeting after that Director's last appointment or re-election; or
  - (b) for more than two years, whichever is longer.

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### **Retirement by rotation**

- 9.2 At least half of the Directors (rounded down to the nearest whole number) must retire from office at each annual general meeting unless there has been an election of Directors earlier that year.
- 9.3 As between those Directors who are to retire under clause 9.2, those to retire will, unless they otherwise agree among themselves, be determined by lot.
- 9.4 A retiring Director continues to hold office as a Director throughout the meeting at which that Director retires and at any adjournment.

### **Chief Executive Officer**

9.5 Clauses 9.1 to 9.5 do not apply to the Chief Executive Officer to the extent the Chief Executive Officer is a Director.

### **Retiring Director eligible for re-election**

9.6 A Director who retires from office or whose office is vacated under this Constitution will be eligible for election or re-election to the Board at the meeting at which that Director retires from office.

### **Removal of Director by the Company**

9.7 The Company may by Ordinary Resolution remove any Director at any time.

### **Vacation of office**

9.8 The office of a Director will be automatically vacated if the Director:

- (a) is declared bankrupt;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with under the laws relating to mental health;
- (c) is prohibited from being a Director in accordance with any of the provisions of the Act or any order made under the Act or the Director's office is vacated;
- (d) resigns by giving the Company written notice;
- (e) either personally or by an alternate Director, fails to attend Board meetings for a continuous period of three Months without leave of absence from the Board; or
- (f) is an executive director under an employment or services agreement with the Company and that agreement terminates, unless the Board determines otherwise.

9.9 A Director whose office is vacated under paragraphs 9.8(a), 9.8(b) or 9.8(c) will not be eligible for re-election until the disability (or disabilities) referred to is (or are) removed.

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## 10. DIRECTORS' CONTRACTS

### Director not to vote on contract in which the Director has a material personal interest

- 10.1 Subject to the Act, a Director may not vote at any Board meeting about any contract or arrangement in which the Director has, whether directly or indirectly, a material personal interest. However, that Director may execute or otherwise act in respect of that contract or arrangement.

### Directors to declare interest

- 10.2 Any Director who has a material personal interest in a matter that relates to the Company's affairs must give the other Directors notice of that interest, unless the interest is of a type referred to in section 191(2)(a) of the Act, or all of the conditions referred to in section 191(2)(c) of the Act are satisfied.
- 10.3 The Director must declare the nature and extent of the Director's interest and the relation of the interest to the Company's affairs at a Directors' meeting as soon as possible after the Director becomes aware of their interest in the matter.
- 10.4 A Director who has an interest in a matter may give a standing notice to the other Directors of the nature and extent of that Director's interest in the matter in accordance with section 192 of the Act.

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### Directors to declare potential conflicts

- 10.5 Any Director who holds any office or possesses any property in circumstances where the holding or possession might, either directly or indirectly, create conflicting duties or interests with those duties or interests that the Director has in his or her capacity as a Director, must declare the fact of holding that office or possessing that property, and the nature and extent of any conflict, at the first Directors' meeting held after he or she becomes a Director or (if already a Director) at the first Director's meeting held after he or she becomes aware of the relevant facts which give rise to the conflict. Secretary to record declarations of Directors
- 10.6 The Secretary must record in the minutes of the meeting any declarations made or notices given by a Director under this Constitution.

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## 11. POWERS OF DIRECTORS

### Powers of Directors

11.1 Subject to the Act and to any provision of this Constitution, the Directors will manage or cause the management of the business of the Company. The Directors may pay, or cause to be paid, all expenses incurred in promoting and forming the Company and may exercise, or cause to be exercised, all powers of the Company that are not, by the Act or by this Constitution, required to be exercised by the Company in general meeting.

### Powers to borrow or raise money

11.2 Without limiting the generality of clause 11.1, the Directors may from time to time at their discretion borrow or raise any sum or sums of money or obtain other financial accommodation for Company purposes, and may grant security for the repayment of that sum or sums or the payment, performance or fulfilment of any debts, liabilities, contracts or obligations incurred or undertaken by the Company in any manner and on any terms and conditions as they think fit.

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### Directors may vote shares in other corporations

11.3 Subject to the Act, the Directors may exercise the voting power conferred by the shares in any corporation held by the Company in any manner they think fit, including in circumstances where a Director may be interested in the exercise, such as an exercise in favour of any resolution appointing a Director as an Officer of a corporation or voting or providing for the payment of remuneration to Officers of the other corporation.

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### Agent or attorney

11.4 The Directors may at any time appoint any person or persons to be a Company agent or attorney for any purpose and with any powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for any period and subject to any conditions as the Directors think fit.

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11.5 Any appointment may be made in favour of:

- (a) any company;
- (b) the members, directors, nominees or managers of any company or firm; or
- (c) any fluctuating body of persons (whether nominated by the Directors or otherwise).

11.6 Any document appointing an agent or power of attorney may provide for the protection or convenience of the agent or attorney and of persons dealing with the agent or attorney as the Directors may think fit.

### Sub-delegation of powers

11.7 The Directors may authorise any agent or attorney they have appointed to sub-delegate all or any of the powers, authorities and discretions vested in them for the time being.

## 12. PROCEEDINGS OF DIRECTORS

### Board meetings

- 12.1 The Directors may meet either:
- (a) in person;
  - (b) by telephone;
  - (c) by audio-visual linkup; or
  - (d) by any other instantaneous communications medium for conferring, for dispatch of business, and adjourn and otherwise regulate their meetings as they think fit.

### Director to be regarded as present at meeting

- 12.2 A Director is regarded as present at a meeting where the meeting is conducted by telephone, audio-visual linkup or other instantaneous communications medium for conferring, if the Director is able to hear, and to be heard by, all others attending the meeting.

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### Place of meeting

- 12.3 A meeting conducted by telephone, audio-visual linkup or other instantaneous communications medium for conferring, will be deemed to be held at the place agreed on by the Directors attending that meeting, provided that at least one of the Directors present at the meeting was at that place for the duration of the meeting. Meetings may be held outside Australia.

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### Convening of Directors meeting

- 12.4 A Director may at any time, and the Secretary on the request of a Director must, convene a meeting of Directors within 21 days of receipt of such request. The requested meeting must not be scheduled within 10 working days after or before a planned Directors' meeting.

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### Notice of meeting

- 12.5 Notice of every meeting of Directors must be given to each Director, but failure to give or receive that notice will not invalidate any meeting.

### Directors may act notwithstanding vacancy

- 12.6 The Directors may act despite there being a vacancy on the Board, but if and so long as their number is below the number required for a quorum, they must not act except in an emergency or to fill a vacancy or to summon a general meeting.

### Quorum for Board meetings

- 12.7 At a meeting of Directors, the number of Directors necessary to constitute a quorum is that number as determined by the Directors and, unless otherwise determined, is three.

### Meeting competent to exercise all powers



12.8 A Directors' meeting at which a quorum is present will be competent to exercise all or any of the powers and discretions vested in or exercisable by the Directors generally.

### **Chair of Board meetings**

12.9 The Directors may elect a chair and deputy chair of their meetings and determine the periods for which they are to hold office. If no chair or deputy chair is elected or if at any meeting neither the chair nor the deputy chair is present at the time appointed for the meeting, the Directors present at the meeting may choose one of the Directors present to be chair of the meeting.

### **Documents tabled at meeting**

12.10 An original document, or a photocopy, facsimile or electronic copy of that document, which is in the possession of, or has been seen by, all Directors attending the Directors' meeting before, or at the time of, that meeting, is deemed to be a document tabled at that meeting.

### **Questions to be decided by majority**

12.11 Questions arising at any Board meeting will be decided by a majority of votes of Directors present and voting. If the votes cast are equal, the chair will have a second or casting vote.

### **Resolution in writing**

12.12 A resolution in writing of which notice has been given to all Directors for the time being entitled to receive notice of that meeting and which is signed by a majority of Directors for the time being entitled to attend and vote at Directors' meetings will be as valid and effectual as if it had been passed at a Directors' meeting duly convened and held. That resolution may consist of several documents in like form each signed by one or more of the Directors. For the purposes of this clause 12.12:

- (a) the signature of an alternate Director will be as effective as, and may be substituted for, the signature of an appointing Director; and
- (b) a signature will be valid if it is transmitted by facsimile, e-mail, or other generally accepted technology.

12.13 The effective date of that resolution referred to in clause 12.12 is the date on which the document or any of the counterpart documents was last signed.

### **Resolution passed is deemed to be determination of Board**

12.14 Any resolution properly passed at a duly convened Directors' meeting at which a quorum is present will be deemed to be a determination by all the Directors or the Board for the purposes of this Constitution.

### **Committee powers and meetings**

12.15 The Directors may delegate any of their powers to a committee of Directors, a sole Director and/or other persons as they think fit and may revoke that delegation.

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- 12.16 Any committee can exercise the powers delegated to it in accordance with any directions that may from time to time be imposed on it by the Board.
- 12.17 The meetings and proceedings of any committee consisting of two or more Directors will be governed by the provisions of this Constitution regulating the meetings and proceedings of the Directors so far as they are applicable and are not superseded by any direction made by the Board under this clause 12.
- 12.18 Subject to the clauses 12.15 and 12.16, the Board may establish a Gift Fund Committee, which may consist of the Chief Executive Officer and at least two Directors and any other person the Board thinks fit. The Gift Fund Committee will:
- (a) manage the Gift Fund, including acting as the only signatories to the Gift Fund; and
  - (b) perform any other specific roles and responsibilities as required by the Department from time to time.

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### Validity of acts of Directors

- 12.19 All acts done by any Directors' meeting or by a committee of the Directors or by any person acting as a Director will be valid even it is discovered afterwards that there was some defect in the appointment or election of that Director or person acting as a Director or that any Director was disqualified or had vacated office or was otherwise not entitled to vote or act.

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## 13. SECRETARY

- 13.1 A Secretary or Secretaries of the Company must be appointed by the Directors in accordance with the Act. The Directors may also appoint acting and assistant Secretaries.
- 13.2 A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Board. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Board. A Secretary may be removed by the Board.

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## 14. EXECUTIVE OFFICERS

### Appointment of Chief Executive Officer

- 14.1 The Directors may at any time appoint any person (whether or not a Director) to the office of Chief Executive Officer or to any other executive office for any period and on any terms they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke the appointment.
- 14.2 The Chief Executive Officer appointed under clause 14.1 must be a Voting Member but is not required to be a Director.

### Payments to Chief Executive Officer

14.3 Where the Directors appoint a Chief Executive Officer in accordance with clause 14.1 such Chief Executive Officer will be entitled to receive remuneration in respect of services actually rendered to the Company, subject to the terms of any agreement entered into in respect of such appointment, as approved by the Board in accordance with this Constitution, including for the avoidance of doubt where such Chief Executive Officer is a Director of the Company.

#### **Directors may confer powers**

14.4 The Board may grant a Chief Executive Officer (where he or she is a Director) or other executive Director any of the powers exercisable by the Directors on terms and conditions and with any restrictions that they think fit. Any powers which are conferred may be concurrent with or to the exclusion of their own powers. The Directors may at any time revoke, withdraw, alter or vary all or any of those powers.

#### **Engagement of Directors to perform executive functions or provide consultancy services**

14.5 The Board may contract with a Director or Directors for the performance by such Director or Directors of executive functions in relation to the Company or the provision of consultancy services to the Company.

#### **Remuneration of Directors**

14.6 Subject to clause 14.3 and 14.6, the Directors will not be entitled to receive remuneration or fees for services provided by them as Directors of the Company.

14.7 Any payments to a Director by the Company as provided for under clause 1.12 must be approved by the Directors.

#### **Expenses of Directors**

14.8 If approved by the Directors, a Director may be paid all reasonable travelling and other expenses incurred by them in attending and returning from meetings of the Directors, any committee of the Directors or any general meetings of the Company or otherwise in connection with the business of the Company and the performance of their functions in accordance with this Constitution.

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## 15. INDEMNITY AND INSURANCE

### Indemnity

15.1 Subject to clause 15.3, to the maximum extent permitted by law:

- (a) the Company:
- (i) must indemnify each Director and Secretary and each former Director and Secretary, including each Director and Secretary who is or was, at the request of the Company, serving as a director or secretary of another company; and
  - (ii) may indemnify any other Officer or former Officer of the Company, against any liability (other than legal costs) incurred in acting as a Director, Secretary, or other Officer of the Company, or as a director or secretary of another company at the request of the Company, other than:
    - (iii) a liability owed to the Company or a Related Body Corporate;
    - (iv) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H or 1317HA of the Act; or
    - (v) a liability that did not arise out of conduct in good faith;

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- (b) the Company:
- (i) must indemnify each Director and Secretary, and each former Director and Secretary, including each Director and Secretary who is or was, at the request of the Company, serving as a director or secretary of another company; and
  - (ii) may indemnify any other Officer or former Officer, for costs and expenses incurred by a Director, Secretary or other Officer of the Company, in defending an action for a liability incurred in acting as a Director, Secretary or other Officer of the Company, or as a director or secretary of another company at the request of the Company, except for legal costs incurred:
    - (iii) in defending or resisting any proceedings, whether civil or criminal, in which the Director, Secretary or other Officer of the Company, is found to have a liability for which they could not be indemnified under clause 15.1(a) above;
    - (iv) in defending or resisting criminal proceedings in which the Director, Secretary or other Officer of the Company, is found guilty;
    - (v) in defending or resisting proceedings brought by the ASIC or by a liquidator for a court order if the grounds for making the order are found by the court to have been established, except for costs incurred in responding to actions taken by the ASIC or a liquidator as part of an investigation before commencing proceedings for the court order; or

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- (vi) in connection with proceedings for relief to the Director, Secretary or other Officer of the Company, under the Act in which the relief is denied by the court; and.
- (c) the Company may make a payment, or agree to make a payment, whether by way of advance, loan or otherwise, for any legal costs incurred by a Director, Secretary or other Officer of the Company, including a Director and Secretary who is or was, at the request of the Company, serving as a director or secretary of another company, on the condition that the Director, Secretary or, other Officer of the Company, must repay the amount paid by the Company to the extent that the Company is ultimately found not liable to indemnify the Director, Secretary or, other Officer of the Company, for those legal costs.

### **Insurance**

- 15.2 Subject to clause 15.3, to the maximum extent permitted by law the Company may pay, or agree to pay, a premium for a contract insuring a person who is or has been a Director, Secretary or other Officer of the Company, including a person who is or has been, at the request of the Company, a director or secretary of another company, or a Director, Secretary or other Officer of a subsidiary of the Company, against a liability incurred by the person in that capacity, including a liability for legal costs, unless the liability:
- (a) arises out of conduct involving wilful breach of duty in relation to the Company; or
  - (b) arises out of a contravention of sections 182 or 183 of the Act.

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### **Exclusions required by law**

- 15.3 The Company must not indemnify any person in respect of any liability or legal costs pursuant to clauses 15.1, or pay any premium for a contract pursuant to clause 15.2, if and to the extent that the Company is prohibited by law from doing so.

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## **16. FINANCIAL STATEMENTS**

### **Financial records**

- 16.1 The Directors must cause financial and other records to be kept as required by the Act, the Tax Act and this Constitution.

### **Financial statements to be audited**

- 16.2 The financial statements of the Company for each Financial Year must be audited by the auditor in accordance with the Act and the Tax Act.

### **Auditor**

- 16.3 The auditor of the Company is to be appointed and removed from time to time in accordance with the Act.

## 17. GIFT FUND

### The Gift Fund

- 17.1 The Company must establish and maintain a public fund (Gift Fund):
- (a) the objective of which must be to support the Principal Purposes;
  - (b) is operated on a not-for-profit basis;
  - (c) to which members of the public are to be invited to make gifts or money or property to the fund for the Principal Purposes;
  - (d) to which gifts of money or property for the Principal Purposes are to be made;
  - (e) to which contributions (that are not gifts) but which are described in section 30-15 of the Tax Act are to be made;
  - (f) to which contributions (that are not gifts) but which can be made to the Gift Fund without adversely affecting the Company's deductible gift recipient status are to be made;
  - (g) to which any money received by the Company because of such gifts or contributions is to be credited; and
  - (h) that does not receive any other money or property.

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### Limits on use of Gift Fund

- 17.2 The Company must use assets of the Gift Fund only for the Principal Purposes.

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### Maintaining the Fund

- 17.3 In maintaining the Gift Fund, the Company will:
- (a) ensure that all times the fund is maintained and used for the Principal Purposes;
  - (b) ensure that the Gift Fund has its own bank account (separate from the Company bank account) for the deposit of donated monies, including interest accruing thereon and monies earned from public fund assets;
  - (c) ensure that the Gift Fund is operated separately and maintained with separate books of account from the Company's general accounts;
  - (d) have in place appropriate procedures to ensure only and all proper amounts of money and property are credited to the Gift Fund;
  - (e) ensure that any money received by the Company from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Gift Fund;
  - (f) ensure that receipts are to be issued in the name of the Gift Fund;
  - (g) ensure any money or property which is incorrectly received into the Gift Fund will be removed from the Gift Fund as soon as practicable with the accounts for the Gift Fund adjusted and noted accordingly; and
  - (h) keep proper accounting records and procedures for the Gift Fund which:
    - (i) record and explain all transactions and other acts the Gift Fund and/or the Company engages in which is

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- relevant to the Company's status as a deductible gift recipient; and
- (ii) show that the each of the following assets of the Gift Fund is used by the Gift Fund and/or the Company only for the Principal Purposes:
    - (A) gifts of money or property for the Principal Purposes;
    - (B) contributions (that are not gifts) but which are described in section 30-15 of the Tax Act held for the Principal Purposes;
    - (C) contributions (that are not gifts) but which can be made to the Gift Fund without adversely affecting the Company's deductible gift recipient status; and
    - (D) money received by the Gift Fund because of such gifts or contributions;
  - (i) keep the records referred in paragraph (h) for at least five years after the completion of such transactions or acts to which they relate;
  - (j) ensure that the release of monies from the Gift Fund and the management of, and sale of, Gift Fund assets is authorised by the Gift Fund Committee;
  - (k) at all times ensure it complies with the requirements of the Tax Act and all other laws and regulations in existence from time to time or any guidelines issued by the Australian Taxation Office in relation to gift funds or such other government authority overseeing the administration of gift funds.

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17.4 The Company agrees to comply with any rules or requirements that the Treasurer and/or the Environment Minister with responsibility for the environment may make to ensure that gifts made to the Gift Fund are only used for its Principal Purposes.

17.5 The Company will inform the Department as soon as reasonably practicable in the event of:

- (a) any change in name of the Company or the name of the Gift Fund;
- (b) any change to the membership of Gift Fund Committee; or
- (c) any change to this Constitution resulting in the departure from the model rules for public funds in the Guidelines to the Register of Environmental Organisations.

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17.6 The Company will provide statistical information requested by the Department on donations to the Gift Fund within four Months of the end of the Financial Year.

17.7 An audited financial statement for the Company and its Gift Fund will be supplied to the Department with the annual statistical return. The statement will provide information on the expenditure of Gift Fund monies and the management of Gift Fund assets.

### **Winding up of Gift Fund**

17.8 At the first occurrence of either the winding up of the Gift Fund or the Company ceasing to be endorsed as a deductible gift recipient

under the Tax Act, any surplus assets of the Gift Fund must be transferred to a fund, authority or institution which:

- (a) has purposes similar to the Principal Purposes;
- (b) is listed on the Register; and
- (c) whose constitution prohibits the distribution of its income and property among its Directors, Members and beneficiaries to an extent at least as great as is imposed on the Company under or by virtue of clauses 1.10.

17.9 The identity of the transferee under clause 17.8 must be decided by the Board.

## 18. WINDING UP

### Distribution of assets

18.1 Subject to clause 17.8, if upon the winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any property whatsoever, the same will not be paid to or distributed amongst the Members but will be given or transferred to one or more other funds, authorities or institutions which or each of which:

- (a) has purposes similar to the Principal Purposes;
- (b) is listed on the Register; and
- (c) whose constitution prohibits the distribution of its income and property among its Directors, Members and beneficiaries to an extent at least as great as is imposed on the Company under or by virtue of clauses 1.10.

18.2 The identity of the transferee under clause 18.1 must be decided by the Board.

Fee or commission paid to liquidator to be approved in general meeting

18.3 No fee or commission will be paid by the Company to any Director or liquidator upon any sale or realisation of the Company's undertaking or assets or any part of them except with the approval of the Company in general meeting, that meeting to be convened by notice specifying the fee or commission proposed to be paid.

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## 19. MINUTES AND REGISTERS TO BE KEPT

### Minutes

19.1 The Directors must cause to be entered in minute books of the Company within one Month of the relevant meeting, minutes containing details of:

- (a) the names of the Directors present at each Directors' meeting and meeting of any committee of Directors;
- (b) all declarations made or notices given by any Director (either generally or specifically) of its interest in any contract or proposed contract or of its holding of any office or property whereby any conflict of duty or interest may arise; and



- (c) all resolutions and proceedings of general meetings of the Company, Directors' meetings and meetings of any committee of the Directors.

### **Minutes to be signed by the chair**

19.2 Any minutes of any general meetings of the Company, Directors' meeting or meetings of any committee of the Directors must be signed by the chair of the meeting or by the chair of the next succeeding meeting and once signed will constitute prima facie evidence of the matters stated in the minutes.

### **Registers**

- 19.3 The Directors must cause the Company to keep:
- (a) a register of Members and other registers required under the Act; and
  - (b) any other registers or sub-registers required by law.

## **20. INSPECTION OF RECORDS**

20.1 Subject to the Act, the Directors may determine whether and to what extent the documents and records of the Company will be open to inspection by any person. This clause 20 does not limit the rights of a Director or former Director under the law.

## **21. NOTICES**

### **Service of notices by Company**

- 21.1 A notice may be given by the Company to any Member in any one of the following ways:
- (a) personally, by giving it to the Member;
  - (b) by leaving it addressed to the Member at the Member's address;
  - (c) by facsimile to the Member at the Member's facsimile number;
  - (d) by e-mail to the Member's electronic address;
  - (e) by post by sending it addressed to the Member at the Member's address; or
  - (f) otherwise by any method (including by advertisement) as the Directors may determine.

### **Electronic communications**

- 21.2 Where the Company is required by the Act or this Constitution to:
- (a) give information in writing;
  - (b) provide a signature;
  - (c) produce a document;
  - (d) record information; or
  - (e) retain a document, that requirement is taken to have been met if the Company uses an electronic communication or an electronic form of the relevant document, and the Company complies with any further requirements of the Electronic Transactions Act 1999 (Cth).

### **Notice deemed to be served**

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- 21.3 Any notice by advertisement will be deemed to have been served on the day of publication of the newspaper containing the advertisement.
- 21.4 Any notice sent by post will be deemed to have been served on the day following the day on which the notice is posted.
- 21.5 Any notice sent by facsimile or other electronic means will be deemed to have been served on the same day that it is sent.
- 21.6 Any notice served on a Member personally or left at the Member's address will be deemed to have been served when delivered.

### **Service by post**

- 21.7 A notice sent by post will be properly served if the notice was correctly addressed and was posted with the required postage. A certificate in writing signed by any manager, Secretary or other Officer of the Company that the notice was so addressed and posted is conclusive evidence of proper service by post.

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### **Notices to Members whose whereabouts unknown**

- 21.8 Where:
- (a) the Company in good faith has reason to believe that a Member is not known at the address shown for that Member in the Register;
  - (b) the Company has subsequently made an enquiry at that address as to the whereabouts of the Member; and
  - (c) the enquiry either elicits no response or a response indicating that the Member's present whereabouts are unknown, all future notices will be deemed to be given to the Member if the notice is exhibited in the Office for a period (not including weekends and public holidays) of 48 hours and will be deemed to be duly served at the commencement of that period. This clause 21.8 will apply unless and until the Member informs the Company that the Member has resumed residence at the Member's address shown in the Register or notifies the Company of a new address to which the Company may send the Member notices (which new address is deemed to be the Member's registered place of address).

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### **Signing notices**

- 21.9 The signature to any notice to be given by the Company may be written, printed or provided by electronic means.

### **Counting days**

- 21.10 Where a given number of days' notice or notice extending over any other period is required to be given, the day on which notice is deemed to be given will not be counted in the number of days or other period.

## **22. THE SEAL**

### **Use of the Seal**

- 22.1 If the Company has a Seal:
- (a) the Directors must provide for the safe custody of the Seal;
  - (b) the Seal must be used only by the authority of the Board or a committee of the Directors with authority from the Board to authorise the use of the Seal; and
  - (c) every document to which the Seal is affixed must be signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

## 23. NEGOTIABLE INSTRUMENTS

### Terms of negotiable instruments

- 23.1 All cheques, bills of exchange, promissory notes and other negotiable instruments must be signed, drawn, accepted, made or endorsed (as the case may be) for and on behalf of the Company by those persons and in that manner determined by the Directors.

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## 24. INTERNAL DISPUTES

- 24.1 The Directors may provide for a mechanism to be established for resolving internal disputes within its Membership, which includes, without limitation:
- (a) the appointment of an independent person to arbitrate the dispute;
  - (b) a process to bring disputing parties together to resolve the dispute at an early stage;
  - (c) a process to ensure that all parties receive a full and fair opportunity of presenting their case; and
  - (d) where the dispute cannot be resolved internally by mediation or arbitration, to refer the matter to a community justice centre, or equivalent, which functions as "a centre for dispute settlement".

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## 25. AMENDMENT OF THE CONSTITUTION

- 25.1 Subject to clause 5.1, this Constitution may be amended by a Special Resolution.