



**Landcare**  
ACT

# **Constitution**

of

# **Landcare ACT**

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**Landcare**  
ACT

**A company limited by guarantee**

ABN 30 611 732 971

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# Preliminary

## Principal Purpose

Landcare ACT is a company limited by guarantee formed for the benefit of the public through the promotion of the stated objects of the company, including by engaging the community to increase participation in sustainable management and care for the land and the environment in the ACT and the surrounding region.

*NOTE: An example or wording which is in bold print italics at the end of certain paragraphs is explanatory only and does not form part of the Constitution. References to Sections relate to relevant provisions of the Corporations Act 2001.*

### 1. Definitions

In this Constitution:

**"AGM"** means the Annual General Meeting of the Company as required by the Corporations Act that must be held at least once in each calendar year and within five months after the end of the Company's financial year.

*Corporations Act 2001 250N*

*(1) A public company must hold an annual general meeting (AGM ) within 18 months after its registration.*

*(2) A public company must hold an AGM at least once in each calendar year and within five months after the end of its financial year.*

*The company's annual financial report, directors' report and auditor's report must be laid before the AGM (see s.317 Consideration of reports at AGM).*

*The rules in s.249C-250M apply to an AGM [refers to meetings of Members of companies].*

**"Article"** means a distinct section, phrase, paragraph, or segment of this Constitution that relates to a particular point. An Article may be broken into various sequentially numbered sub-sections and any reference to a sub-section of a particular Article should be read in conjunction with the whole Article. Some "Articles" may be referenced as "pursuant to..." another Article that may determine how the Article is to be interpreted. The entire collective group of Articles herein refer to the single unified registered Constitution of the Company.

**"ASIC"** means the Australian Securities and Investment Commission.

**"Associate Member"** means any person who has a demonstrated commitment to the purpose, object and values of the Company and who meets the criteria for membership set out in Article 13(d) and who has applied for membership and been determined by the Board to have met the criteria for membership of that class in accordance with Article 15.

**"attendee"** means a person permitted, at the discretion of the Board, to attend any part of the Company's Board meetings but with no status as a Director, and only

in a non-voting capacity. Attendees permitted to attend Board meetings may speak with the consent of the Chair on agenda items to provide advice, counsel and information on matters or answer questions as requested by Directors through the presiding Chair of the meeting. For the sake of clarity, attendees in this capacity are recognised as having no role or authority in either making, or participating in making, decisions that affect the whole, or a substantial part of the business of the Company; nor are they understood to have the capacity to affect significantly the Company's financial standing; nor are they understood to be issuing directions, instructions or wishes in accordance with which the Directors of the Company are expected to act; nor in any other way be deemed to be a director of the Company under the meaning of such in this Constitution or the Act. An attendee in this context includes a person giving advice in the proper performance of functions attaching to their professional capacity or their business relationship with the Company.

**“Attorney”** is a person who exercises power under the terms of a power of attorney.

*[A **power of attorney** is an authorisation to act on another person's behalf and in their name in a legal or business matter. The person granting the **power of attorney** is known as the grantor and the person authorised to act is the agent or attorney-in-fact. The power granted may be very wide in scope and may include the power to sign documents on behalf of the grantor, deal with their financial affairs and property, vote in the capacity of a shareholder (member), etc. This is distinct from a **proxy**, which commonly refers only to authorisation to vote on another's behalf and is therefore more limited in scope than a **power of attorney**. For example, a member entitled to attend and vote at a company meeting may appoint a **proxy** to attend and vote in their place noting that a **proxy** is also the person to whom authorisation is granted.]*

**“Auditor”** means a person appointed for the purpose of and as required to audit the Company's accounts pursuant to 250R(1)(c) of the Act.

**“Board”** means the governing body of Directors of the Company in office for the time being however described or any number of Directors assembled at a meeting of the Board transacting business in accordance with this Constitution, being not less than a quorum, and as set out in Article 58(j) of this Constitution and who may, for the internal purposes of the Company, be cited (collectively) as the **“Directors”**, who shall be construed as referencing the Board unless the context requires otherwise.

**“Business Day”** means a day except a Saturday, Sunday or public holiday in the state or territory in which the Company is taken to be registered for the purposes of the Corporations Act.

**“Chair”** means a natural person, who meets the definition of "independent" and is appointed as a Director to the office of Chair of the Company by, and at the discretion of the Board pursuant to Article 46(b) and Article 62(a) and (b) and who is to preside as Chair at each General Meeting and Board meeting of the Company pursuant to the authorities, powers and functions described in this Constitution and any policies, protocols, practices or processes determined by

the Board from time to time that give effect to the authorities, powers and functions described in this Constitution.

**"Chief Executive Officer"** of the Company means any person so appointed by, and responsible to, the Board as **the principal corporate executive** to act within written Board-delegated authorities for the overall day-to-day operations of the Company; and who may for the internal purposes of the Company be cited as the "CEO" or any other title the Board may so determine from time to time; or as otherwise expressed pursuant to Article 64.

**"Committee"** means a committee constituted by and accountable to the Board pursuant to Article 55 and is a governance advisory body for the purpose of assisting and advising the Board in areas fundamental to the Company's objects and otherwise providing the Board with recommendations relevant to select governance matters of the Company and consisting of one or more Directors and/or other persons as the Directors from time to time think fit.

**"Company"** means Landcare ACT, being the company constituted by this document and shall be **the Company's name** for the purposes of section 148 of the Act.

**"Constitution"** means this registered Constitution of the Company (and includes its schedules and annexures, if any), as amended from time to time pursuant to Article 69, which binds the Company and its Members to the same extent as if it were a contract between them under which they each agree to observe its provisions.

**"Corporations Act"** means the *Corporations Act 2001* (Cwlth) and the other Acts and instruments referred to in that Act and as enacted and amended by the Commonwealth of Australia and the States and Territories of Australia from time to time as it applies to the Company for the time being.

*Application of the Corporations Act 2001 (Cwlth): In this Constitution unless the contrary intention appears, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act 2001 (Cwlth), the same meaning as in that provision of the Corporations Act 2001 (Cwlth); and "section" means a section of the Corporations Act 2001 (Cwlth). This Constitution shall comply with the subscribed matters specified in the relevant sections of the Corporations Act 2001 (Cwlth) and such matters that may be prescribed.*

**"corporate entity"** means a body legally constituted as an artificial ('synthetic') person authorised to act as an individual and preserve its rights in perpetual succession and existence.

**"Corporations Regulations"** means the Corporations Regulations 2001 (Cwlth).

**"Deputy Chair"** means any person appointed to the office of Deputy Chair of the Company in accordance with Article 63 and who is to chair at any General and Board meeting of the Company in the absence or unwillingness of the Chair, pursuant to the authorities, powers and functions described in this Constitution

and any formally delegated policies, protocols, practices or processes determined by the Board from time to time that give effect to the authorities, powers and functions described in this Constitution.

**“Director”** means an eligible natural person pursuant to Articles 46(a) and 46(b), who is duly appointed or elected to the Board pursuant to Article 47; and who may for the internal purposes of the Company be cited (individually) as a “member of the Board” or a “Board member”. For the avoidance of doubt, a reference to a Director includes an Office Bearer, unless otherwise expressly stated.

**"electronic address"** means an internet mail address.

**"electronic means"** means, in relation to the methods of giving or sending certain notices, documents produced, etc., the same as that in the Corporations Act s.600G and includes telephone, fax, electronic mail and other forms of electronic transmission or technology consented to by all Directors.

**“environment”** means the land, surroundings or conditions in which a person, animal, or plant lives or operates OR the natural world, as a whole or in a particular geographical area, especially as affected by human activity.

**“Fee”** means a fee or levy referred to in Article 23(a).

**“Financial Year”** means the 12 month period commencing on 1 July and ending on 30 June in any year or such other period as the Board may determine from time to time.

**"Full Member"** means any organisation that is either a:

- community-based landcare network incorporated in the ACT; or
- an organisation representing rural landholders incorporated in the ACT; or
- an organisation representing “local traditional custodians that can speak for country” in the ACT

that meets the criteria for membership set out in Article 13(c) and that has applied for membership and been determined by the Board to have met the criteria for membership of that class in accordance with Article 15.

**“General Meeting”** means any meeting of Members (including the AGM) duly called and held (and any adjourned holding of it) in accordance with this Constitution or as otherwise prescribed by the Corporations Act at which all Members are entitled to attend and participate in accordance with this Constitution.

**“Gift Fund”** means the fund established and maintained in accordance with the Articles 7-11 for the purpose of receiving and holding any gifts of money or property for charitable purpose in accordance with the objects of the company.



**"Governance Charter"** means a Board-established document pursuant to Article 53(f) that contains the Company's internal control framework of Board-determined governing policies that give effect to the powers delegated to the Board pursuant to this Constitution; that define the roles, functions, authorities, accountabilities, processes and protocols that guide how everyone in the Company is expected to act and behave; and articulates who is responsible for what, who they are accountable to, and the authorities and constraints each person must work within and as such, implies a range of values that will apply to the Company and its people.

**"independent"** means having held no office in relation to either a Member or the Company for a minimum of three years prior to accepting an appointment.

**"initial Full Member"** means a person who is named in the application for registration of the company, with their consent, as a proposed Full Member of the company as at the date of the adoption of this Constitution.

**"leave of absence"** means long service leave, extended leave, recreation leave, annual leave, sick leave or any other form of leave of absence from service.

**"legal costs"** of a person means legal costs incurred by that person in defending or resisting any proceedings (whether criminal, civil, administrative or judicial), appearing before or responding to actions taken by any court, tribunal, government authority or agency, other body or commission, a liquidator, an administrator, a trustee in bankruptcy or other authorised official, where that proceeding, appearance or response relates to a *liability* of that person.

**"liability"** of a person means any liability (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an Officer of the Company or in or arising out of the conduct of the business of the Company, including as result of appointment or nomination by the Company or a subsidiary as a trustee or as a Director, Officer or employee of another body corporate.

**"Member"** means any person who:

- (i) meets the criteria for membership set out in Article 13; and
- (ii) who has applied for membership and been determined by the Board to have met the criteria for membership of that class in accordance with Article 15; and
- (iii) whose name is entered in the Register as a Member of the Company.

**"Member Delegate"** means a natural person authorised, in accordance with this Constitution, by a Full Member Group or Associate Member Organisation to attend at a General Meeting of the Company and fulfil the rights attached to the Full Member Group or Associate Member.

- The full Members of a Group are collectively entitled to the number of Member Delegates as ascribed to their applicable Group pursuant to Article 14(c);
- Associate Member Organisations are entitled to one Member Delegate who may attend as an observer but not vote at general meetings pursuant to Article 14(d).

**“natural person”** means a real human being, as opposed to a legal or artificial person which may be a private (i.e. business entity or non-governmental organisation) or public (i.e. government) organisation.

**"not-for-profit"** means (as defined by the Australian Taxation Office) an *“...organisation which is not operating for the profit or gain of its individual members, whether these gains would have been direct or indirect. This applies both while the organisation is operating and when it winds up. Any profit made by the organisation goes back into the operation of the organisation to carry out its purposes and is not distributed to any of its members. The Australian Taxation Office accepts an organisation as non-profit where its constituent or governing documents prevent it from distributing profits or assets for the benefit of particular people - both while it is operating and when it winds up. These documents should contain acceptable clauses showing the organisation's non-profit character. The organisation's actions must be consistent with this requirement”*;

**“notice”** means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act.

**"objects"** of the Company means the objects set out in Article 5 that define the purpose of the Company;

**“Office Bearers”** means Directors who hold a Board appointed or delegated position (with corresponding delegated authority), pursuant to Articles 62 and 63, in addition to their director roles on the Board. **“Office Bearer”** means one of those persons.

**"Officer"** means

- (a) a Director or Secretary of the Company; or
- (b) a person:
  - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company; or
  - (ii) who has the capacity to affect significantly the Company's financial standing; or
  - (iii) in accordance with whose instructions or wishes the Directors of the Company are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's

professional capacity or their business relationship with the Directors or the Company); or

- (c) a receiver, or receiver and manager, of the property of the Company; or
- (d) an administrator of the Company; or
- (e) an administrator of a deed of company arrangement executed by the Company; or
- (f) a liquidator of the Company; or
- (g) a trustee or other person administering a compromise or arrangement made between the Company and someone else, as defined in the Dictionary of the Corporations Act;

(Note: An officer does not include a patron or holder of another honorary office of the Company if the office does not give its incumbent a right to participate in the management of the Company's affairs)

**"Organisation"** means a body corporate including without limitation any incorporated entity with the legal capacity and powers of a natural person or any government-controlled [non-corporate] entity that is legally and financially connected to, or part of a Commonwealth, State or Territory government 'body politic'.

**"personal representative"** means the legal personal representative, executor or administrator of the estate of a deceased person.

**"policies"** means any rules, regulations, procedures, protocols or processes prescribing matters required or permitted by this Constitution to be prescribed or necessary or convenient to be prescribed with respect to any matter relating to the general courses of action that the Board deem necessary for the effective and prudent internal control, administration and management of the Company and its affairs, interests and property and to competently regulate the business of the Company as created and amended from time to time by the board pursuant to their powers in Articles 53-56. The policies will regulate the actions and behaviours of Company members, Directors and officers in their role within, and representation of the Company and will define the roles, functions, authorities, accountabilities, processes and protocols of how everyone in the Company (Board, Directors, committees, officers, management, staff, volunteers, etc) is expected to exercise their delegated powers, the performance of their assigned role and the discharge their obligatory duties and which may for the internal purposes of the Company be cited as the "governing policy" or any other title the Board may so prescribe from time to time.

**"poll"** is a form of casting votes by ballot in writing which includes votes cast on behalf of absent Members who have appointed proxies or attorneys.

**"principal place of business"** means the current address of the Company's registered office as notified to the Registrar-General under the Corporations Act as being the primary location where the Company's business is performed and where the

Company's books and records are kept and has the same meaning as "**registered office**".

"**Public Officer**" means a person chosen pursuant to Articles 65(e) and who is the "Primary contact" authorised to contact the Australian Taxation Office on behalf of the Company and who has authority to access all roles on the Company's account to add, remove and update the list of authorised contacts.

"**public statement**" and "**statement**" means statements, whether verbal, written, in electronic form or any other form whatsoever that could or would be seen, heard or by any other means communicated to a person not a Member of the Company.

"**real or personal property**" means the basic types of property in common law, roughly corresponding to the division between immovables and movables in civil law. Real property consists of land, buildings, crops, and other resources, improvements, or fixtures still attached to the land. Personal property is essentially all property other than real property, including goods, animals, money, and vehicles.

"**Register**" means the Register of Members required to be kept pursuant to the Corporations Act 2001 s169 and may contain additional information related to the membership as the Board shall determine from time to time.

*Corporations Act 2001 s.169*

*(1) The register of members must contain the following information about each member:*

*(a) the member's name and address;*

*(b) the date on which the entry of the member's name in the register is made.*

"**Registered Office**" means the primary location and principal place of administration where the Company's business is performed and where the Company's books and records are kept and has the same meaning as "**principal place of business**";

"**related body corporate**" means, an organisation which is not a Member and is a subsidiary type of entity (being a body corporate or trust) and/or one which might be promoted by the Company.

"**Relevant Officer**" means a person who is, or has been, a Director or an Officer of the Company.

"**resolution**" means a resolution where **more than 50 %** of the total eligible votes cast on the resolution (i.e. those votes cast by persons eligible to vote who are present at the meeting in person or by proxy as the Constitution allows) are in favour of the resolution;

"**seal**" means the common seal of the Company (if applicable) and includes any official seal of the Company (noting that the Corporations Act allows the Company to "*make contracts and execute documents without using a seal*" in which case the

Company must act in accordance with provisions in s.126 and s.127 of the Corporations Act (2001));

**"Secretary"** means any person appointed in accordance with the Corporations Act and pursuant to Article 65 to the statutory office of company secretary to perform the specific duties set out on the Corporations Act and this Constitution of a company secretary and includes an assistant secretary or any person appointed to act as the secretary or assistant secretary temporarily;

*A public company must have at least 1 secretary [Corporations Act 2001 s.204A(2)]*

**"special business"** means any business that is dealt with at a General Meeting or business dealt with at an Annual General Meeting with the exception of the "ordinary" business pursuant to Article 30(b), and is business that has a specific purpose and requires a "special resolution" to be put for the business to be dealt with at the meeting.

**"special resolution"** means a resolution passed at a meeting where **75 %** of the total eligible votes cast on the resolution (i.e. those votes cast by persons eligible to vote who are present at the meeting in person or by proxy as the Constitution allows) are in favour of the resolution, and if the context suggests, of which notice has been given in accordance with sections 249H and 249L of the Corporations Act, as amended or varied from time to time;

*Special resolutions are needed for important matters such as resolutions by members to wind up the company or change its name or provisions of its constitution. Unless at least 95% of the members agree, the notice for a meeting to pass a special resolution must be given at least 21 days before the meeting and the resolution itself must be passed by at least 75% of the members who vote at that meeting. More details of the contents of a relevant notice and the amount of timing will be found in sections 249H and 249L.*

**"strategic direction"** means and is restricted to matters encapsulating the purpose and aspirations of the enterprise and pertaining to the outcomes and result priorities the Company is to accomplish as determined by the board from time to time but excludes, without limitation, operational plans, policies and decisions.

## **2. Interpretation**

Headings are for convenience only and do not affect interpretation. Reference to an *Article* in this Constitution, refers to a section, phrase, paragraph, or segment that relates to a particular point.

Unless the context indicates a contrary intention, in this Constitution:

- (a) **(amendments and statutes)** all references to statutory provisions includes its delegated legislation and are construed as references to any statutory modification, consolidation, amendment, replacement or re-enactment for the time being in force;

- (b) **(corresponding meaning)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (c) **(currency)** a reference to “\$” or “dollars” is a reference to Australian currency;
- (d) **(example)** if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (e) **(exercise of a function)** a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty;
- (f) **(from time to time)** a power, an authority or a discretion reposed in a director, the directors, the Company in general meeting or a Member of the Company may be exercised at any time and from time to time;
- (g) **(function)** a reference to a function includes a reference to a power, authority or duty;
- (h) **(gender)** a word indicating a gender includes every other gender;
- (i) **(inadvertent omissions and interpretation of the Constitution)** if some formality required by this Constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the Board that the omission has directly and unfairly prejudiced any Member financially. The directors shall, consistent with and in pursuance of this Constitution, have authority to interpret the meaning of this Constitution and any matter relating to the company on which this Constitution is silent. The decision of the Board is final and binding on all Members;
- (j) **(meaning not limited)** a reference to the words "include", "including", "for example" or "such as", when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (k) **(persons)** words importing persons includes a reference to a natural person (and any executor, administrator or successor in law of that person) and also includes any type of entity or body of persons which has separate legal rights and is subject to obligations including partnerships, incorporated associations, co-operatives, companies and other body corporates and bodies politic whether by Act of Parliament or otherwise;

- (l) **(power)** a power to do something includes a power, exercisable in the like circumstances, to revoke it or undo it and a reference to a power is also a reference to authority or discretion;
- (m) **(regulations)** a reference to a statute, ordinance, legislation, code or other law includes regulations and instruments made under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (n) **(sending)** refers to the sending of a document includes the sending of that document via electronic means, including, but not limited to, electronic mail;
- (o) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied or authenticated by any other manner permitted by the Corporations Act or any other law and in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the directors;
- (p) **(singular includes plural)** a word importing the singular includes the plural (and vice versa);
- (q) **(word)** if a word is defined, another part of speech has a corresponding meaning;
- (r) **(writing)** "in writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

### 3. Application of Corporations Act

- (a) Unless the context indicates a contrary intention and except for the definitions and interpretations in the preceding Article, in this Constitution:
  - (i) a reference to the Corporations Act is to the Corporations Act in force in relation to the Company after taking into account any waiver, modification or exemption which is in force either generally or in relation to the Company; and
  - (ii) a word, expression or phrase given a meaning in the Corporations Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act, unless that word or phrase is otherwise defined in this Constitution.  
*This means the words used in this Constitution shall, unless the contrary intention appears, have the same meaning as they have in the Law*

### **Replaceable Rules Inapplicable**

- (b) The replaceable rules in the Corporations Act now and hereafter contained in the Corporations Act do not apply to Landcare ACT unless repeated in this Constitution or specifically made applicable to Landcare ACT by a provision of this Constitution. A reference to a replaceable rule means that the paragraph is based upon, but may not be identical to, a provision of the Corporations Act which provides guidance but which is not compulsory noting that the operation of each of the sub-sections of the Corporations Act which are defined as replaceable rules are displaced by this Constitution and do not apply to the Company.

### **4. Enforcement**

- (a) Any difference of opinion arising with regard to the interpretation of any part of this Constitution may be dealt with in accordance with the procedure described in Article 70.
- (b) Each Member submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory, the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to the interpretation of any part of this Constitution.
- (c) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, then that does not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
  - (ii) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Constitution.



## Objects and powers

### 5. Objects and Powers of the Company

#### Objects

- (a) The principal **objects** of the Company are:
- (i) sustainable natural resource care and management in the ecological, social, cultural, and economic interests of the ACT and, to the extent practicable and permissible by law, the region surrounding the ACT;
  - (ii) an inclusive leadership network for community-based landcare that is responsive to the needs of the environment and the community;
  - (iii) a community-based landcare network which is understood, valued and supported by government, business, and philanthropic and other organisations;
  - (iv) a community-based landcare network which is coordinated, with strong partnerships and the commitment and capacity to work collaboratively;
  - (v) a community-based landcare network which is viable, resilient and able to grow.
  - (vi) the establishment and maintenance of a Gift Fund for its principal purpose.

**BUT AT ALL TIMES** recognising that the Company may be constrained to pursue only some of those objects to exclusion of others from time to time or to pursue some objects with differing priorities.

#### Powers of the Company

- (b) The **powers** of the Company are as follows.

In addition to the powers conferred on the Company by the Corporations Act or Regulations, this Constitution and consistent with the assigned authorities in Article 53, the Company has all such powers as are necessary or convenient to carry out its objects and, in particular, shall have the following powers solely for and consistent with the purpose of carrying out the aforesaid objects and not otherwise to:

- (i) **employ, appoint and/or engage** and at its discretion **remove, dismiss or suspend** any employees, officers, staff, servants, agents, contractors, and tradespersons or professional persons;
- (ii) determine **wages, salaries and gratuities** of officers, employees and other appointed contractors, agents, service providers where appropriate;
- (iii) establish and support, or aid in the establishment and support, of services, institutions, funds, trusts, schemes and conveniences calculated to benefit employees or past employees of the Company and their dependants, and the granting of pensions, allowances or other benefits to employees or past employees of the Company and their dependants, and the making of payments towards insurance or superannuation in relation to any of those purposes;
- (iv) print and publish by any technological means newsletters, periodicals, books, leaflets or other documents;
- (v) receive or make **gifts, grants, devises, bequests, subscriptions or donations** from or to any person, fund, authority, organisation or institution and accept any gift whether subject to special trust or not and to act as trustee of money or other property vested in the Company on trust;
- (vi) take any measures from time to time as the Company may deem expedient or appropriate for the purpose of facilitating **the raising of revenue and the procuring of contributions to the funds of the Company**, whether through charity fundraising or other events or by way of donations, subscriptions, grants or otherwise;
- (vii) draw, make, accept, endorse, discount and issue cheques, draft bills of exchange, promissory notes and other negotiable instruments;
- (viii) borrow or raise **money** and other funds in such manner and on such terms as the Company may think fit;
- (ix) secure the repayment of money raised or borrowed or the payment of a debt or liability of the Company by giving mortgages, charges or securities upon or over all or any of the real or personal property of the Company;
- (x) **invest** in authorised trustee investments of any monies of the Company not immediately required for any of its objects or purposes in any manner in which trustees are authorised by law to administer money held on trust;
- (xi) enter into **contracts**;

- (xii) establish and support or aid in the establishment or support of, any **other service** formed for any of the objects, consistent with any of the aforesaid objects of the Company;
- (xiii) establish, maintain and manage any **building or works** and arrange for the construction maintenance and alteration of buildings or works and expend money and do any other thing necessary, convenient or advisable in relation to any building or works to achieve the objects of the Company;
- (xiv) purchase, take on lease or in exchange and the hiring or otherwise acquiring of any **real or personal property** that may be deemed necessary or convenient to achieve the objects of the Company;
- (xv) buy, sell and supply of and deal in, **goods or services** of any kind to achieve the objects of the Company;
- (xvi) **co-operate** with any person or organisation on matters relating to the objects of the Company;
- (xvii) form a solely owned **incorporated entity** or participate in the formation of an incorporated entity with any other persons or bodies whose objects are similar to those of the Company;
- (xviii) subscribe to, become a member of, form or participate in the formation of, or enter into a **partnership or joint venture** with, or co-operate with or amalgamate with, any other persons or bodies whose objects are similar to those of the Company;  
  
in relation to (xvii) and (xviii), *provided* that the Company shall not subscribe to or participate or support with its funds or amalgamate with any corporate entity which allows the distribution of its income and property among its individual Members as provided for this Company in Article 6 of this *Constitution*;
- (xix) undertake **exhibitions, seminars and consultative forums** in Australia and overseas deemed necessary or convenient to achieve the objects of the Company;
- (xx) prepare and make **submissions** to Local, State and Federal governmental departments and agencies involved in the natural resource management and Landcare sectors deemed necessary or convenient to achieve the objects of the Company; and
- (xxi) **do any other lawful act** as may be necessary, incidental or conducive to the achievement or attainment of the aforesaid objects of the Company.

## Income and property

### 6. Application of income and property

- (a) Subject to Articles 6(b) and 6(c), the Company must apply the profits (if any) or other income and property of the Company solely towards the promotion of the objects of the Company set out in Article 5(a) and no portion of it may be paid or transferred, directly or indirectly, to any Member or Director, whether by way of dividend, bonus or otherwise.
- (b) Nothing in Article 6(a) prevents **the Company making any payment to any Member** in good faith of:
  - (i) reasonable and proper remuneration for **any services actually rendered or goods supplied** to the Company in the ordinary and usual course of business of the Company;
  - (ii) the payment or reimbursement of **out-of-pocket expenses** incurred on behalf of the Company where the amount payable does not exceed an amount previously approved by the Board;
  - (iii) reasonable and proper **rent or fees** for premises leased or licensed by any Member to the Company;
  - (iv) money to any Member, being a person engaged in any business or trade profession, for all usual **professional or other charges** for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
  - (v) **interest** at a rate not exceeding a rate approved by the Board on money borrowed by the Company from the Member.
- (c) The Company must not pay fees to or on behalf of Directors except that **the Company may make payments to a Director** in good faith for:
  - (i) the payment or reimbursement of **out-of-pocket expenses** reasonably incurred by a Director in the performance of any duty as a Director of the Company where that payment or reimbursement has been approved by the Board;
  - (ii) the payment of a reasonable and proper amount in compensation for **services actually rendered** by a Director in travelling to or attending Board

meetings and other events for or on behalf of the Company, where the payment has been approved by the Board;

- (iii) the payment of a reasonable and proper amount in **remuneration** for attending upon the functions and duties of a director or office bearer on reasonable commercial terms commensurate with similar not for profit entities and which remuneration has been approved by the Board and providing that, it does not exceed the total amount (if any) approved by the Members in General Meeting as the remuneration payable to all directors and office bearers for undertaking such functions and duties;
  - (iv) money to any Director, being a person engaged in any business or trade profession, for all usual **professional or other charges** for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
  - (v) any **salary or wage** due to the Secretary as an employee of the Company where the terms of employment have been approved by the Board;
  - (vi) an **insurance premium** in respect of a contract insuring a Director or Officer for a liability incurred as an Officer of the Company where the Board has approved the payment of the premium; or
  - (vii) any payment in relation to **indemnity or insurance** under Article 68(a), 68(c) or 68(d) or a payment under any agreement or deed referred to in Article 68(e).
- (d) Nothing in Article 6(a) prevents the Company making any payment in good faith of an amount under Article 77.

## Gift Fund

### 7. Establishment of a Gift Fund

- (a) The Company must maintain a Gift Fund for its principal purpose:
  - (i) to which gifts of money or property for that purpose are to be made; and
  - (ii) into which any money received by the Company because of such gifts or contributions is to be credited, including without limitation interest earned and income derived from such gifts, and money from the realisation of gifts of property; and
  - (iii) that does not receive any other money or property

- (b) For the avoidance of doubt, money or property received by the Company in respect of:
  - (i) sponsorships, raffles, charity auctions, dinners and commercial activities; or
  - (ii) membership fees and levies,must not be made or credited to the Gift Fund.
- (c) Receipts are to be issued in the name of the Company and proper accounting records and procedures are to be kept and used for the Gift Fund.

#### **8. Conduit Policy for the Gift Fund**

The company has a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons. Any allocation of funds or property to other persons or organisations will be made in accordance with the established purposes of the organisation and will not be influenced by the preference of the donor. The organisation will not pass a donation of money or property to other organisations, bodies or persons as a condition of a donation.

#### **9. Winding up of the Gift Fund**

If the organisation is wound up or if the endorsement (if any) of the organisation as a deductible gift recipient is revoked, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it, shall be transferred to a fund, authority or institution to which income tax-deductible gifts can be made having objects similar to the objects of the company.

## **Liability of Members**

#### **10. Extent of liability guarantee**

Each Member undertakes to contribute an amount not exceeding \$10.00 to the property of the Company if the Company is wound up at a time when that person is a Member, or within one year of the time that person ceased to be a Member, for:

- (a) payment of the Company's debts and liabilities contracted before that person ceased to be a Member;
- (b) payment of the costs, charges and expenses of winding up the Company; and
- (c) adjustment of the rights of the contributories among themselves.

*Limited liability limits the personal liability of MEMBERS of the entity to the amount of their guarantee to cover unpaid debts of the corporate entity should it wind up.*

*Corporations Act 2001 s.9 Definition: "A limited liability company is formed on the principle of having the liability of its members limited to the respective amounts that the members undertake to contribute to the property of the company if it is wound up."*

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## Membership

### 11. Membership classes and qualifications

- (a) The Members of the Company are:
  - (i) the Initial Full Members specified in Schedule 1; and
  - (ii) such other persons the Directors admit to membership in accordance with this Constitution from time to time.
- (b) Membership of the Company consists of the following classes:
  - (i) Full Members;
  - and
  - (ii) Associate Members.
- (c) **Full Members**
  - (i) An **Organisation** is eligible to apply for membership as a Full Member of the Company within one of the following applicable assigned Groups:
    - (a) **GROUP 1:** community-based landcare networks incorporated in the ACT;
    - or
    - (b) **GROUP 2:** organisations representing rural landholders incorporated in the ACT;
    - or
    - (c) **GROUP 3:** organisations representing local traditional Aboriginal custodians that can speak for country in the ACT.
  - (ii) An Organisation applying to be a Full Member must make an application for membership in the form approved by the Board from time to time, provided that each such application contains:
    - (i) adequate particulars of the applicant's eligibility criteria qualifications as prescribed by the Board from time to time; and
    - (ii) an undertaking on the part of the applicant to be bound by the Constitution;

- (iii) An Organisation becomes a Full Member upon approval of that Organisation's application by the Board in accordance with Article 15 and will be assigned to an applicable Full Member Group as determined by the Board from time to time.

**(d) Associate Members (Natural persons and Organisations)**

- (i) **person** is eligible to apply for membership as an Associate Member of the Company if the person:
  - A. has a demonstrated commitment to the purpose, object and values of the Company; and
  - B. makes an application for membership in the form approved by the Board from time to time, provided that each such application contains:
    - (i) adequate particulars of the applicant's background and eligibility criteria qualifications; and
    - (ii) an undertaking on the part of the applicant to be bound by the Constitution; and
  - C. in the case of a person (not a natural person), provide the name of a natural person who will represent the Organisation at the Company's General Meetings as the Member Delegate with all the rights pursuant to Article 14(d).
- (ii) A person becomes an Associate Member upon approval of that person's application by the Board in accordance with Article 15.

**12. Membership rights**

In addition to those rights and powers that are permitted by this Constitution to benefit, or otherwise be performed by, Members of the Company:

- (a) All Members may attend the Company's General Meetings pursuant to Articles 14(c) and 14(d).
- (b) All Members may enjoy reduced registration fees for any Landcare ACT product and service offerings as determined from time to time by the Board.
- (c) Full Members, subject to this Constitution and acting within their assigned Group pursuant to Article 13(c)(i), are entitled to appoint natural person Member Delegates as follows:



- A GROUP 1 - may appoint three natural person Member Delegates;
  - B GROUP 2 - may appoint one natural person Member Delegate;
  - C GROUP 3 - may appoint one natural person Member Delegate;
- and **each Member Delegate is entitled to** attend General Meetings, and:
- (i) has one vote pursuant to Article 33(c, d &e)
  - (ii) has speaking rights; and
  - (iii) may nominate persons to stand for election as a Director of the Company.
- (d) Associate Members, subject to this Constitution, at the Company's General Meetings:
- (i) have observer status (noting that Associate Member Organisations must nominate a Member Delegate to attend as that Associate Member's representative pursuant to Article 13(d)(i)C);
  - (ii) have no speaking rights or voting rights; and
  - (iii) may not nominate persons to stand for election as a Director.
- (f) Subject to the Corporations Act and the rights of particular classes of Members, the Company may vary or cancel rights of Members in that class:
- (i) by a special resolution passed at the Company's General Meetings; or
  - (ii) with the written consent of Members who are entitled to at least 75% of the votes that may be cast by Members at the Company's General Meetings.

### **13. Application and acceptance of Members**

- (a) An **application** from an Organisation or a person for either class of membership of the Company (or from a Member of one class wishing to transfer to another class of membership of the Company) must:
  - A. be in a form determined by the Board from time to time ("**Membership Application Form**") and be accompanied by:
    - (i) the relevant fee (if any and where applicable);
    - (ii) the postal address and electronic mail address of the applicant;

- (iii) the signature (or where applicable, the seal) of the applicant, or such other form of authentication (electronic or otherwise) approved by the Board from time to time; and
- B. be lodged with the Secretary at the Company's principal place of business.
- (b) The Secretary must **refer** any Membership Application Forms to the Board.
- (c) The Board shall, after **considering the application**, and applying the criteria for eligibility as set out for the relevant class of Member in Article 13, determine in its absolute discretion whether an applicant may become a Member. The Board may require an applicant to give such further information as it desires before approving or refusing the admission of an applicant for Membership.
- (d) If an application as a Member is **accepted** by the Board, the Company must:
  - (i) give written notice of the acceptance to the applicant;
  - (ii) enter the applicant's details in the Register pursuant to Article 16(b);
  - (iii) give a copy of (or electronic access to) the Constitution and any relevant policies that regulate the actions and behaviours of Company members or that define their obligations to the Company to the newly accepted Member.
- (e) If an application to be a Member is **rejected** by the Board, the Company must give written notice of the rejection to the applicant and refund in full any fee paid by the applicant.
- (f) Failure by the Company to comply with any notice requirement in this Article does **not invalidate** the decision by the Board regarding an application.

**14. Register of members**

- (a) The Secretary must establish and maintain a Register of the Members of the Company which accurately reflects who is a Member.
- (b) The Register must contain the following information about each Member:
  - (i) the Member's name and postal and/or electronic mail address;
  - (ii) the class of membership; and
  - (iii) the date on which the Member's details was entered in the Register;and any additional information related to the membership as the Board shall determine from time to time.
- (c) Where an Organisation is a Member, the Register must contain:
  - (i) the organisation's name and postal and electronic mail address;
  - (ii) the name and address of the Officer of the organisation;
  - (iii) the date on which the Member's details was entered in the Register;and any additional information related to the membership as the Board shall determine from time to time.
- (d) The Register must be kept at the Company's principal place of business.
- (e) The Secretary must ensure that only those particulars required by the Corporations Act relating to a Member are:
  - (i) available for inspection in accordance with the Corporations Act; and
  - (ii) given only to a person with the right to have such information in accordance with the Corporations Act.
- (f) Each member must provide the Company with all required information to enable it to compile a record of the Member's qualifications and name and address and a Member shall within a reasonable time by notice in writing lodged with the Secretary inform the Company of any change in the Member's qualifications, name or address. The Company may require reasonable verification of the change of such information.
- (g) The Company must ensure that it has at least one Member at all times.

- (f) No name will be removed from the Register except in accordance with this Constitution, or on the resignation or death of a member.

#### **15. No transfers**

The rights of being a Member are not transferable whether by operation of law or otherwise. All rights and privileges of membership of the Company cease on termination of membership

## **Cessation of membership**

#### **16. Expiry and renewal of membership**

- (a) Each membership will, subject to earlier termination in accordance with this Constitution, expire on 31 December (or by any extension of that date resolved by the Board) each year (or the Board may otherwise at their discretion, determine an extension of that period so that membership may be for one, two or three year periods).
- (b) On or before 1 November (or by any extension of that date resolved by the Board) each year (or each two or three years if the Board have so determined), the Company must send to each Member a notice of renewal in a form prescribed by the Board ("**Membership Renewal Form**") setting out:
  - (i) the prescribed fee for the following year (or two or three year period if the Board have so determined) as determined in accordance with Article 23; and
  - (ii) the method of renewal.
- (c) Membership is renewed by a Member:
  - (i) complying with the method of renewal set out on the Membership Renewal Form; and
  - (ii) providing the fee prescribed by the Membership Renewal Form in cleared funds in accordance with the method of payment and by the date set out on the Membership Renewal Form.
- (d) A person ceases to be a Member of the Company and to any of the rights or privileges of Membership if that person has not effected renewal of their membership in accordance with this Article 18 before 31 December (or by any extension of that date resolved by the Board) of each year (or each two or three years if the Board have so determined).

#### **17. Resignation of a Member**

- (a) A Member may at any time resign as a Member of the Company by giving the Company notice in writing. Unless the notice provides otherwise, a resignation by a Member takes effect immediately on the giving of that notice to the Company.
- (b) If a Member resigns, the Company must remove the Member's name from the Register.
- (c) Notwithstanding that a person has resigned their membership under Article 19(a), the person will continue to be liable for any fees or other payments and all arrears due and unpaid at the date their resignation was received, unless otherwise determined by the Board.

## 18. Disciplining of a Member

- (a) Subject to Article 20(b), if:
  - (i) in the opinion of the Board, a Member is in **breach of, infringes, or has refused or wilfully neglected to comply with a provision of this Constitution** or a provision of any governing policies, guidelines, procedures, protocols, practices or processes prescribed by the Board from time to time (pursuant to their powers under Article 53); or
  - (ii) in the opinion of the Board, any act or omission of a Member is unbecoming of a Member, **prejudicial to the interests or reputation of the Company** or is not consistent with the aims, objectives and values of the Company; or
  - (iii) a Member is, or any step is taken for that Member to become, either an **insolvent** under administration or an externally administered body corporate; or
  - (iv) the succession by another body corporate or entity to the assets and liabilities of the Member occurs such that the Member **no longer satisfies any criteria for admission to membership** of the Company which may be established from time to time

the Board has the power to apply one of the following **disciplinary resolutions**:

- (iii) **expel** the Member from the Company by a resolution of the Board and remove the Member's name from the Register. The term of the expulsion, before the person is eligible to re-apply for membership, shall be determined by the Board and stated in the resolution of expulsion; or
- (iv) **suspend** the member from membership of the Company for a specified period or until the breach for which it was suspended is remedied; or

- (v) **apply other sanctions** as the Board reasonably see fit.
- (b) The Board must not apply a disciplinary resolution under Article 20(a) unless:
  - (i) at least 5 business days notice has been given to the Member stating the date, time and place at which the question of a disciplinary resolution is to be considered by the Board, and the nature of alleged event giving rise to the disciplinary resolution; and
  - (ii) the affected Member is given the opportunity of explaining to the Board, orally (in person or by representation) or in writing, why the Member should not be subject to the disciplinary resolution.
- (c) Where a meeting to consider a disciplinary resolution is held, the Board must:
  - (i) give the Member an opportunity to make oral representations (in person or by representation);
  - (ii) give due consideration to any written representations submitted to the Board by the Member at or prior to the meeting; and
  - (iii) by resolution determine whether to confirm or to revoke the disciplinary resolution.
- (d) Where the Board confirms a disciplinary resolution, the Secretary must within seven days after confirmation, by notice in writing inform the Member of that confirmation and of the Member's right to appeal and the disciplinary resolution confirmed by the Board will not have effect unless and until:
  - (i) seven days after receiving such notice, where the Member does not exercise that right of appeal; or
  - (ii) where the Member exercises the right of appeal, the disciplinary resolution is confirmed by the Company in General Meeting.
- (e) A Member may appeal to the Company in General Meeting against a disciplinary resolution confirmed by the Board within seven days after receiving notice of such confirmation by lodging with the Secretary a notice to that effect.
- (f) Upon receipt of notice from the Member, the Secretary will promptly notify the Board, and the Board will convene a General Meeting of the Company within 28 days after receipt by the Secretary of the Member's notice. The only business to be conducted at that General Meeting will be the question of whether the disciplinary resolution confirmed by the Board should be confirmed or revoked by the Company.

- (g) After both the Board and the Member have been given an opportunity to state their respective cases orally or in writing, or both, the Member Delegates present will vote by secret ballot. If a majority of Member Delegates vote in favour of confirmation of the disciplinary resolution, the Board will take disciplinary action against the Member in accordance with its resolution. If a majority of Member Delegates vote against confirmation of the disciplinary resolution, the resolution will be revoked.

## 19. Other cessation events

If a Member:

- (a) being an natural person, **dies** or becomes **bankrupt** or becomes of **unsound mind** or a person whose property is liable to be dealt with under a law about mental health; or
- (b) being an Organisation is, or any step is taken for that Organisation to become, either an **insolvent** under administration or an externally administered body corporate, has a receiver, receiver and manager, administrator or liquidator appointed, or is wound up (except for the purposes of reconstruction or amalgamation to a successor Organisation with substantially the same objectives and purposes as the original Organisation) or is otherwise deregistered under the laws of the jurisdiction in which it is incorporated; or
- (c) **ceases to satisfy any criteria for admission to membership** of the Company which may be established from time to time; or
- (d) is succeeded by another body corporate or entity to the assets and liabilities of the Member such that the Member **no longer satisfies any criteria for admission to membership** of the Company which may be established from time to time;

the Member ceases to be a Member of the Company and the Company must remove the Member's name from the Register (noting that ceased Members pursuant to Articles 21 (c) & (d), who may satisfy criteria pertaining to another class of membership may be transferred to that class pursuant to Article 15(a)).

## 20. Effect of cessation

- (a) The termination of a membership for any reason does not in any way prejudice, lessen or otherwise affect the **liabilities and obligations** of a Member (whether they arise under this Constitution or otherwise) existing at the date of termination or which arise or crystallises after that date out of, or by reason of, facts or circumstances occurring or in existence at or before that date.

- (b) Without limiting the previous clause, termination of membership does not relieve a Member from:
  - (i) any obligation to pay any **fees** payable (pursuant to Articles 23-27) on or before the date of termination and does not entitle the Member to any refund of any such fees in part or in whole; and
    - A a Member remains liable to pay, and must immediately pay, to the Company all amounts that at date of cessation were payable by the person to the Company as a Member; and
    - B a Member must pay to the Company interest at the rate the Board resolves on those amounts from the date of cessation until and including the date of payment of those amounts
  - (ii) any obligation to pay the **Member's guarantee** amount specified in Article 12 if that amount becomes payable within one year of cessation of the Member's membership.

The Company may by resolution of the Board waive any or all of its rights under this Article 22(a) and 22(b)(i).

## Fees and other payments

### 21. Setting of Fees

- (a) The Company may by resolution of the Board require the payment of fees or levies by Members in the amount, on any terms and at any times as the Board resolves, including payment by instalments.
- (b) The Company may when admitting Members make fees payable for one or more class of Members for different amounts and at different times as the Board resolves.
- (c) The Company may by resolution of the Board revoke or postpone a fee or extend the time for payment of a fee, at any time prior to the date payment that fee is due.

### 22. Notice of Fees

- (a) The Company must give notice of fees to the Members who are required to pay the fees at least ten Business Days before the due date for payment. The notice must specify the time or times and place and manner of payment and any other information as the Board resolves.



- (b) The non-receipt of a notice of a fee by, or the accidental omission to give notice of a fee to, any Member does not invalidate the fee.

### **23. Payment of Fees**

- (a) Each Member must pay to the Company the amount of each fee payable by the Member in the manner, at the time and at the place specified in the notice of the fee.
- (b) In a proceeding to recover a fee, or an amount payable due to the failure to pay or late payment of a fee, proof that:
  - (i) the name of the person is entered in the Register as a Member;
  - (ii) the person is in the class of Members liable to pay the fee;
  - (iii) there is a record in the minute books of the Company of the resolution of the Board determining the fee or the terms of membership of a class of Members requiring the payment of the fee pursuant to Article 23; and
  - (iv) notice of the fee was given or taken to be given to the person in accordance with this Constitution

is conclusive evidence of the obligation of that person to pay the fee.

### **24. Interest payable**

- (a) If an amount payable to the Company as a fee is not paid before or on the time for payment, the person who owes the amount must pay to the Company:
  - (i) interest on the unpaid part of the amount from the date payment is due to the date of payment at the rate the Board resolves; and
  - (ii) all costs and expenses the Company incurs due to the failure to pay or the late payment.
- (b) Interest under Article 26(a) accrues daily and may be capitalised at any interval that the Board resolves.
- (c) The Company may by resolution of the Board waive payment of some or all of the interest, costs or expenses payable under Article 26(a).

### **25. Company payments**

- (a) A Member or the Personal Representative of a deceased Member must pay to the Company on written demand an amount equal to all payments the Company

makes to a government or taxation authority in respect of the Member or the death of the Member, where the Company is either:

- (i) obliged by law to make the relevant payment; or
  - (ii) advised by a lawyer qualified to practise in the jurisdiction of the relevant government or taxation authority that the Company is obliged by law to make the relevant payment.
- (b) The Company is not obliged to notify a Member in advance of its intention to make a payment under Article 27(a).
- (c) An amount payable by a Member to the Company under Article 27(a) is treated under this Constitution as if it is a fee properly made by the Board of which notice has been given on the date on which the Company gives the written demand to the Member or the Personal Representative of a deceased Member.
- (d) Nothing in this Article affects any right or remedy, which any law confers on the Company.

## Proceedings of General Meetings

### 26. Calling General Meetings

- (a) The Company may by resolution of the **Board** call a General Meeting to be held at the time and place (including two or more locations using technology which gives eligible attending Members as a whole a reasonable opportunity to participate) and in the manner the Board resolves.
- (b) No **Member** may call or arrange to hold a General Meeting except where permitted by the Corporations Act.  
*Corporations Act s.249D to 249F and 249H to 249M have details of how members can call a general meeting of the Company.*
- (i) A General Meeting shall be convened by the Board on such **requisition by Member Delegates** with at least 5% of the votes that may be cast at the general meeting as provided by the Corporations Act under section 249D. The Board must call the meeting within 21 days after the request is given them and the meeting is to be held not later than two months after the request is received.
  - (ii) Member Delegates with more than 50% of the votes of all of those Member Delegates classified pursuant to Article 13(c) who make a request under Article 28(b)(i) may call and arrange to hold a General Meeting if the Board do not do so within 21 days after the request is given to the Board.

*Corporations Act s.249D to 249F and 249H to 249M have details of how members can call a general meeting of the Company.*

- (iii) Any Member classified pursuant to Article 13(c) seeking to convene a General Meeting pursuant to Article 28(b)(ii) must pay the Company's reasonable costs of convening the General Meeting.
- (iv) The Company must pay the reasonable expenses the Members incurred in convening a meeting under Article 28(b)(iii) because the Board failed to call and arrange to hold the meeting pursuant to Article 28(b)(i);
- (v) The Company may recover the amount of the expenses incurred pursuant to Article 28(b)(iv) from the Directors. However, a Director is not liable for the amount if the Director can show that he or she took all reasonable steps to cause the Company to comply with section 249D. The Directors who are liable are jointly and individually liable for the amount.

*Corporations Act s.249E*

- (c) The Company must hold an **AGM** in one location at least once in each calendar year and within five months after the end of its financial year.

*Corporations Act s.250N(2)*

## 27. Notice of General Meetings

- (a) Where the Company has called a General Meeting, at least **21 days notice** of the meeting must be given to the Members and Directors, unless:

- (i) Ninety five (95) % of Members agree to a shorter period for a General Meeting; or

- (ii) all Members agree to a shorter period for an AGM.

*Corporations Act s.249J "Written notice of a meeting of a company's members must be given individually to each member entitled to vote at the meeting and to each director"*

*Corporations Act s.249H provides details of the amount of notice to be given at meetings.*

- (b) A person may waive notice of any General Meeting by written notice to the Company.
- (c) Subject to the Corporations Act, anything done (including the passing of a resolution) at a General Meeting is not invalid because either or both a person does not receive notice of the meeting or a proxy form, or the Company accidentally does not give notice of the meeting or a proxy form to a person.
- (d) The Company must give its auditor:
  - (i) notice of General Meetings in the same way that a Member is entitled to receive notice under Article 29(a); and

- (ii) any other communication relating to the General Meeting that a Member is entitled to receive.

*Corporations Act s.249K*

- (e) A notice of a General Meeting must:

- (i) set out the **place, date and time** for the meeting (and, if the meeting is to be held in two or more places, the **technology** that will be used to facilitate this); and

- (ii) state the general nature of the meeting's **business**; and

- (iii) if a resolution is to be proposed at the meeting, set out an intention to do so either as a resolution or a special resolution and state:

- A that **resolution** (which must set out the wording of the proposed resolution and be signed by the members proposing the resolution);
- B a copy of any related **Members' statement** to members, but only if:
  - (a) it is less than 1000 words long;
  - (b) the Directors consider it not to be defamatory or otherwise likely to cause breach any law or be of a nature prejudicial to the interests of the company;
  - (c) subject to Article 28(b)(iii)-(v), the Members who proposed the resolution or made the request have paid the Company enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the Members' statement to members; or
  - (d) in the case of a proposed Members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the Members;

- (iv) in the case of an election of Directors, state the **names of the candidates for election** and any "**qualification résumé**" submitted by each candidate pursuant to Article 47(c)(A); and

- (v) contain a statement setting out the following information:

- A that a Member Delegate has the **right to appoint a proxy**; and
- B that the **proxy must be a natural person**; and
- C any **proxy form** for the meeting may be given in the form pursuant to Article 40(d) and subject to any requirements in the Corporations Act.

## 28. Business of General Meetings

- (a) All business will be ***special business*** that is transacted at, a **General Meeting** not being an Annual General Meeting, or an Annual General Meeting with the exception of the business pursuant to Article 30(b), and shall include:

- (i) items of business submitted by the Board;
- (ii) items of business submitted by Members of the Company classified pursuant to Article 13(c) with at least 50% of the votes that may be cast on the resolution or at least three Members who are entitled to vote at a General Meeting.

- (iii) The notice of the item of business submitted by Members pursuant to Article 30(a)(ii) must:

- A be in writing; and
- B set out the wording of any proposed resolution; and
- C be signed by the Members proposing to move the resolution.

Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.

*(ii) & (ii) above comply with Corporations Act 2001 s.249N*

- (b) In addition to any special business pursuant to Article 30(a), the business that may be transacted at an **Annual General Meeting** pursuant to the Corporations Act 2001 s.250R is:

- (i) the confirmation of the minutes of the preceding meeting;

- (ii) the consideration of the annual:

- A financial report;
- B Directors' reports; and
- C auditor's report.

- (iii) the election of Directors;

- (iv) if required at that particular AGM by the Corporations Act, the appointment of an auditor and the fixing of their remuneration.

*Corporations Act 2001 s.327B, 327C, 327D, 328A & 328B deal with appointment, consent and nomination of Auditor*

- (c) Except with the approval of the Board, with the permission of the Chair of the meeting or under the Corporations Act, no person may move at any General Meeting:
  - (i) any resolution except in the form set out in the notice of meeting pursuant to Articles 29(e) (iii) and 30(a)(ii)&(iii); or
  - (ii) any amendment that substantially changes the intent of any resolution or of a document which relates to any resolution. Any objection raised under this Article 30(c)(ii) in relation to the question of the validity of the amendment of the resolution must be decided by the Chair of the General Meeting, whose decision, made in good faith, is final and conclusive.
  - (iii) The Chair must not allow a new item of business if:
    - A such an item requires special notice or a special resolution; or
    - B the General Meeting was called to transact special business.

## **29. Quorum of General Meetings**

- (a) No business may be transacted at a General Meeting except, subject to Article 32, the election of the Chair of the meeting, unless a quorum for a General Meeting is present at the time when the meeting commences.
- (b) A **quorum** for a General Meeting is **more than 50 % of Member Delegates** present in person or by proxy.
  - (i) Where there is only one Member, then a quorum is that Member's Delegate attending or otherwise resolving in writing any matter required to be decided by that Member.
- (c) If a quorum is not present within 30 minutes after the time appointed for the commencement of a General Meeting, the meeting is dissolved unless the Chair of the meeting or the Board adjourn the meeting to a date, time and place determined by that Chair or otherwise the Board.
- (d) If a quorum is not present within 30 minutes after the time appointed for the commencement of an adjourned General Meeting, two Member Delegates constitute a quorum, or if that quorum is not present,
  - (i) if the meeting was called pursuant to Article 28(a), a minimum of one Member Delegate present constitutes a quorum.

- (ii) if the meeting was called pursuant to Article 28(b), the meeting is dissolved.

### **30. Chair of General Meetings**

- (a) Subject to Articles 32(b) and 32(c), the Chair must chair each General Meeting or, in the Chair's absence, the Deputy Chair may preside as Chair at every General Meeting.

- (b) If at a General Meeting:

- (i) there is no Chair or Deputy Chair; or
- (ii) the Chair or Deputy Chair is not present within 15 minutes after the time appointed for the commencement of a General Meeting or either is not willing to chair all or part of the meeting,

the Directors present may (by majority vote) elect one of their number or, in the absence of all the Directors or if none of the Directors present is willing to act, the Member Delegates may elect one of their number, to chair that meeting.

- (c) A Chair of a General Meeting may, for any item of business at that meeting or for any part of that meeting, vacate the chair in favour of another person nominated by him or her.

### **31. Conduct of General Meetings**

- (a) Subject to the Corporations Act, the Chair of a General Meeting is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.

- (b) The Chair of a General Meeting may:

- (i) make rulings without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting;
- (ii) determine the procedures to be adopted for proper and orderly discussion or debate at the meeting;

- (iii) determine, in the absence of such pursuant to Article 36(b), the rules and procedures in relation to a poll to be adopted for the casting of, the circumstances in which such a vote will be valid and the recording of votes at the meeting.

- (c) The Chair of a General Meeting may:

- (i) at his or her discretion permit interested persons (other than Members) to attend General Meetings of the Company;  
***Subject to Article 34(d), an attendee has no right to speak at or otherwise participate in the meeting and must follow any directions of the Chair***
- (ii) if he or she deems necessary to maintain a safe, respectful and professional environment, refuse to admit a person, or require them to leave and not return to a general meeting if the person:
  - A refuses to permit examination of any article in the person's possession;  
or
  - B is in possession of any electronic or recording device; placard or banner;  
or other similar sign or article; or
  - C acts or behaves in a manner unbecoming of appropriate decorum;which the Chair considers to be dangerous, offensive or liable to cause disruption.
- (d) The Chair of a General Meeting may determine any dispute concerning the admission, validity or rejection of a vote at the meeting.
- (e) The Chair of a General Meeting may, subject to the Corporations Act, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote.
- (f) The Chair of a General Meeting may refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business of the meeting permitted under the Corporations Act without being referred to in the notice of meeting.
- (g) If the Chair of a General Meeting considers it reasonably appropriate to do so, the Chair may nominate use of an additional meeting place or technology that gives eligible attending Members as a whole a reasonable opportunity to participate in the meeting.  
***Example: It may be appropriate to arrange an overflow venue if there are too many persons present at the meeting to fit into the first nominated venue or if one or more Members wishes to attend by video link from another location.***
- (h) The Chair of a General Meeting may delegate any power conferred by this Article to any person.
- (i) Nothing contained in this Article 33 limits the powers conferred by law on the Chair of a General Meeting.



### 32. Attendance at General Meetings

- (a) Subject to this Constitution and any rights and restrictions of a class of Members set out in Article 14, a Member Delegate may, if so entitled, attend and vote:

- (i) in person;
- (ii) by proxy; or
- (iii) by attorney.

#### Powers of attorney

- A A Member may appoint an attorney to act at a meeting of Members. If the appointer is an individual, the power of attorney must be signed in the presence of at least one witness. If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's Membership, that Member must deliver the instrument appointing the attorney to the Company for notation.
  - B An appointment of an attorney is not effective for a particular meeting of Members unless the power of attorney, or a certified copy of it, is received by the Company at the Office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the meeting is resumed.
  - C The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.
- (b) The Chair of a General Meeting may require a person acting as a proxy or attorney at that meeting to establish to the Chair's satisfaction that the person is the person duly appointed to act. If the person fails to satisfy this requirement, the Chair may exclude the person from attending or voting at the meeting.
- (c) A **Director** is entitled to receive notice of all General Meetings, pursuant to Article 29(a), and to attend all General Meetings and is entitled to speak at those meetings.
- (d) A person, whether a Member or not, requested by the Board to attend a General Meeting is entitled, with the permission of the Chair of the meeting, to attend that meeting and to speak at that meeting pursuant to Article 33(c)(i).
- (e) The **Company's auditor** is entitled to receive notice of all General Meetings, pursuant to Article 29(d)(i)), and is entitled to attend any General Meeting.

### 33. Authority of Member Delegates

- (a) A Member Delegate has the rights to act in accordance with the Member Delegates' rights under this Constitution to which the appointment relates pursuant to Article 14(c) & (d).
- (b) The appointment of a Member Delegate of a Full Member is taken to confer authority to attend at a general meeting and:
  - (i) vote on any permitted amendment moved to a proposed resolution pursuant to Article 30(c)(ii), and on any motion that a proposed resolution not be put or any similar motion;
  - (ii) vote on any procedural motion, including any motion to elect the Chair of the General Meeting to which the appointment relates, to vacate the chair or to adjourn the meeting; and
  - (iii) attend and vote at a general meeting which is rescheduled, postponed or adjourned to another time or changed to another place, even though the appointment may refer to a specific meeting to be held at a specified time or place.

### 34. Voting at General Meetings

- (a) A resolution put to the vote at a General Meeting must be decided on a show of hands, unless a poll is demanded in accordance with Article 39 and that demand is not withdrawn.
- (b) The Board may, pursuant to Article 53(e), determine the rules and procedures in relation to a poll to be adopted for the casting of, the circumstances in which such a vote will be valid and the recording of votes at the meeting.
  - (i) Where a notice of meeting specifies a poll, a vote cast by a Member Delegate is taken to have been cast by that person at the meeting if the rules and procedures in relation to a poll (whether set out in the notice of meeting or otherwise determined by the Board or the Chair) are complied with.
- (c) Subject to this Constitution and any rights or restrictions of a class of Members, on a **show of hands** at a General Meeting, each Member Delegate having the right to vote on the resolution has **one vote**.
- (d) Subject to this Constitution and any rights or restrictions of a class of Members, on a **poll** at a General Meeting, each Member Delegate having the right to vote on the resolution has **one vote**.

- (e) Subject to this Constitution and any rights or restrictions of a class of Members, where the Board has determined **other means** (including postal and electronic) permitted by law for the casting and recording of votes by Members on any resolution to be put at a General Meeting, each Member Delegate having a right to vote on the resolution has **one vote**.
- (f) An objection to a right to vote at a General Meeting or to a determination to allow or disregard a vote at the meeting may only be made at that meeting (or any resumed meeting if that meeting is adjourned). Any objection under this Article must be decided by the Chair of the General Meeting, whose decision, made in good faith, is final and conclusive.
- (g) Except where a resolution at a General Meeting is a special resolution that requires a special majority pursuant to the Corporations Act, the resolution is passed if more votes are cast by Members Delegates in favour of the resolution than against it.
- (h) In the case of an equality of votes on a resolution at a General Meeting, the Chair of that meeting does **not** have a casting vote on that resolution and the resolution lapses.
- (i) Unless a poll is demanded and the demand is not withdrawn, a determination by the Chair of a General Meeting following a vote on a show of hands that a resolution has been passed or not passed is conclusive, and an entry to that effect in the book containing the minutes of the proceedings of the Company signed by the Chair will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour or against the resolution.

### 35. Voting by proxy or attorney

- (a) The validity of any resolution passed at a General Meeting is not affected by the failure of any proxy or attorney to vote in accordance with directions (if any) of the appointing Member Delegate.
- (b) If a proxy of a Member purports to vote in a way or circumstances that contravene the Corporations Act, on a show of hands the vote of that proxy is invalid and the Company must not count it. If a poll is demanded, votes which the Corporations Act require a proxy of a Member to be cast in a given way must be treated as cast in that way.
- (c) Subject to this Constitution and the Corporations Act, a vote cast at a General Meeting by a person appointed by a Member Delegate as a proxy or attorney is valid despite the revocation of the appointment (or the authority under which the appointment was executed), if no notice in writing of that matter has been received by the Company at least 48 hours before the commencement of that meeting.

**36. Restrictions on voting rights**

- (a) The authority of a proxy or attorney for a Member Delegate to speak or vote at a General Meeting to which the authority relates is suspended while the appointing Member Delegate is present in person at that meeting.
- (b) A Member Delegate is not entitled to vote on any resolution when any fee or other amount due and payable to the Company in respect of any Full Member's membership of the Company in their assigned Group has not been paid.
- (c) A Member Delegate is not entitled to vote on a resolution at a General Meeting where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (d) The Company must disregard any vote on a resolution at a General Meeting purported to be cast by a Member Delegate, proxy or attorney where that person is not entitled to vote on that resolution. A failure by the Company to disregard a vote on a resolution as required by this Article 38 does not invalidate that resolution or any act, matter or thing done at the meeting, unless that failure occurred by wilful default of the Company or of the Chair of that meeting.

**37. Polls**

- (a) A poll on a resolution at a General Meeting may be demanded by not less than two Member Delegates only in accordance with the Corporations Act and any Board determined rules and procedures in relation to a poll, or by the Chair of that meeting.
- (b) No poll may be demanded at a General Meeting on:
  - (i) the election of a Chair of that meeting; or
  - (ii) unless the Chair of the meeting otherwise determines the adjournment of that meeting.
- (c) A demand for a poll may be withdrawn.
- (d) A poll demanded on a resolution at a General Meeting for the adjournment of that meeting (subject to Article 39(b)(ii)) must be taken immediately. A poll demanded on any other resolution at a General Meeting must be taken in the manner and at the time and place the Chair of the meeting directs.
- (e) The result of a poll demanded on a resolution of a General Meeting is a resolution of that meeting.

- (f) A demand for a poll on a resolution of a General Meeting does not prevent the continuance of that meeting or that meeting dealing with any other business.

### 38. Proxies

*CORPORATIONS ACT 2001 Sections 249X through to 250D deal with Proxies*

- (a) A Member Delegate who is entitled to attend and vote at a General Meeting may appoint **another natural person** from a Full Member organisation assigned to their Group (other than the CEO or Secretary of the Full Member organisation) to attend and vote at that General Meeting, as proxy for the Member Delegate in accordance with the Corporations Act but not otherwise.
  - (i) In respect of any one General Meeting, a person may not be appointed as proxy for more than two Member Delegates other than the Chair who may be appointed as proxy for any number of Member Delegates.
- (b) If the name of the proxy in a form of appointment of proxy is not filled in, the proxy of that Member Delegate is:
  - (i) the person specified by the Company in the form of appointment of proxy in the case the Member Delegate does not choose; or
  - (ii) if no person is so specified, the Chair of that meeting.
- (c) A proxy appointed in accordance with this Constitution and the Corporations Act to attend and vote may only exercise the rights of the Member Delegate on the basis and subject to the restrictions provided in the Corporations Act and this Constitution.
- (d) A form of appointment of proxy is valid if it is in writing, and in accordance with the Corporations Act or in any other form (including electronic) which the Board may determine or accept.

*CORPORATIONS ACT 2001 s.250RA deals with proxy forms:*

*An appointment of a proxy is valid if it is signed ...by the member of the company making the appointment and contains the following information:*

- (a) the member's name and address;*
- (b) the company's name;*
- (c) the proxy's name or the name of the office held by the proxy;*
- (d) the meetings at which the appointment may be used.*

### 39. Receipt of appointments of proxy or attorney

- (a) An appointment of proxy or attorney for a General Meeting is effective only if the Company receives the appointment (and any authority under which the appointment was signed or a certified copy of the authority) not less than 48 hours before the time appointed for the meeting to commence or (in the case of an adjourned meeting) resume.

*CORPORATIONS ACT 2001 Section 250B states proxies are to be deposited more than 48 hours before a meeting but may reduce the period*

- (b) Where a notice of meeting specifies an electronic address or other electronic means by which a Member Delegate may give the Company a proxy appointment (and any authority under which the appointment is signed), a proxy given at that electronic address or by that other electronic means is taken to have been given by the Member Delegate and received by the Company if the requirements set out in the notice of meeting are complied with.
- (c) Revocation of the appointment of a proxy or attorney (and any authority under which such revocation is given) may be given to the Company in the same manner as the appointment.

#### **40. Multiple appointments of proxy or attorney**

- (a) Even if the Company has not received notice of revocation of an appointment, an appointment of a proxy of a Member is revoked (or, in the case of a standing appointment, suspended for that particular General Meeting) if the Company receives a further appointment of a proxy from that Member which would result in there being more than one proxy of that Member entitled to act at the meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this Article.
- (b) If more than one proxy or attorney appointed by a Member is present at a General Meeting and the Company has not received notice of any revocation of any of the appointments:
  - (i) a proxy or attorney appointed to act at that particular meeting may act to the exclusion of a proxy or attorney appointed under a standing appointment; and
  - (ii) subject to Article 42(b)(i), a proxy or attorney appointed under the most recent appointment may act to the exclusion of a proxy or attorney appointed earlier in time.
- (c) The appointment of a proxy for a Member is not revoked by an attorney for that Member attending and taking part in a General Meeting to which the appointment relates, but if that attorney votes on a resolution at that meeting, the proxy is not entitled to vote, and must not vote, as the Member's proxy on that resolution."

#### **41. Adjournments of General Meetings**

- (a) The Chair of a General Meeting may at any time during the meeting adjourn the meeting or any business, motion, question or resolution being considered or

remaining to be considered at the meeting or any discussion or debate, either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the Chair.

- (b) If the Chair of a General Meeting exercises the right to adjourn that meeting under Article 43(a), the Chair may (but is not obliged to) obtain the approval of those present at the meeting entitled to vote to the adjournment.
- (c) No person other than the Chair of a General Meeting may adjourn that meeting.
- (d) The Company may give notice of a General Meeting resumed from an adjourned meeting as the Board resolves. Failure to give notice of an adjournment of a General Meeting or the failure to receive any notice of the meeting does not invalidate the adjournment or anything done (including the passing of a resolution) at a resumed meeting.
- (e) Only business left unfinished is to be transacted at a General Meeting resumed after an adjournment.

#### **42. Cancellations and postponements of General Meetings**

- (a) Subject to the Corporations Act, the Company may by resolution of the Board cancel or postpone a General Meeting or change the place for the meeting, prior to the date on which the meeting is to be held.
- (b) Article 44(a) does not apply to a meeting called in accordance with the Corporations Act by Members or by the Board on the request of Members, unless those Members consent to the cancellation or postponement.  
*Corporations Act s.249D to 249F and 249H to 249M have details of how members can call a general meeting of the Company.*
- (c) The Company may give notice of a cancellation or postponement or change of place of a General Meeting as the Board resolves. Failure to give notice of a cancellation or postponement or change of place of a General Meeting or the failure to receive any notice of the meeting does not invalidate the cancellation, postponement or change of place of a meeting or anything done (including the passing of a resolution) at a postponed meeting or the meeting at the new place.
- (d) 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 calling the meeting.

#### **43. Resolutions determined without General Meetings**

- (a) Any written resolution of Member Delegates determined without a General Meeting, having been held (and whether contained in one document or in

several copies) and signed (including by electronic signature) by each Member Delegate entitled to vote, is as valid and effectual as a resolution duly passed at a General Meeting of the Company unless:

- (i) it is a resolution to remove an auditor, appoint a director or remove a director
  - (ii) it is a special resolution, or
  - (iii) the Corporations Act requires a resolution to be passed at a General Meeting.
- (b) Any such written resolution under Article 45(a) may consist of:
- (i) several copies of a document each signed by one or more Member Delegates and takes effect at the date and time on which the last Member Delegate necessary for the resolution to be passed, signs a copy of the resolution; or
  - (ii) a record of several electronic messages each indicating the identity of the sender, the text of the resolution and the sender's agreement or disagreement to the resolution, as the case may be, and such a resolution takes effect on the date on which the last Member Delegate's message necessary for the resolution to be passed is received.
-



## Directors

### 44. General

- (a) Subject to Article 46(b), **only nominee natural persons of Full Members may be elected as Directors**, noting that:
  - (i) Directors are elected as individuals and are not elected as representatives of any Member and must act for the benefit of the Company as a whole, and not in the interests of other bodies or persons and not allow personal interests, or the interest of any associated persons, to conflict with the interests of the Company.
- (b) A natural person, who must be independent of the Company, but with an appropriate mix of skills and attributes pursuant to Article 46(e), shall be appointed as a Director and to the position of **Chair** by, and at the discretion of the Board.
  - (i) A Chair so appointed holds office until the conclusion of the AGM next following their appointment, at which time they must retire but are eligible to be re-appointed by the Board.
  - (ii) The person ceases to be the Chair pursuant to Article 50(a-h) or otherwise if they retire and are not re-appointed by the Board or are terminated pursuant to Article 62(g) or fail to meet the definition of independent.
- (c) The Directors of the Company (other than a person appointed pursuant to Article 46(b)) are those persons appointed or elected as Directors pursuant to Article 47.
- (d) The **number of Directors** shall be not be less than three and not more than eight consisting of:
  - (i) the Director appointed as Chair pursuant to Article 46(b);
  - (ii) Directors elected pursuant to Article 47.
- (e) The Company intends that the Board, to the extent possible, includes Directors that have a mix of **skills and attributes**, as prescribed by the Board from time to time pursuant to Article 53(e), that are commensurate with those expected of a person to adequately govern an entity of similar size and complexity and to fulfil the duties pursuant to Article 46(f);
- (f) In relation to their **duties**, Directors shall be and are required to:

*Corporations Act s.179-197*

- (i) **act in good faith, in the best interest of the Company** (pursuant to Article 46(a)(i)) and for a proper purpose;
- (ii) not improperly use their **position** to gain advantage for themselves or someone else or cause detriment to the corporation;
- (iii) not improperly use **information** [obtained as a director] to gain advantage for themselves or someone else or cause detriment to the corporation;
- (iv) give other directors notice of a **material personal interest** in a matter that relates to the affairs of the company pursuant to Article 51;
- (v) use reasonable **care and diligence** in the exercise of their powers;
- (vi) monitor and understand the financial position and ensure **financial affairs** are managed in a responsible manner and ensure the maintenance of proper **financial records** and statutory **financial reporting** and that the Company does not trade while insolvent

pursuant to the Corporations Act, any additional duty set out in the Corporations Act, this Constitution or the law.

#### **45. Appointment and Procedure for Election of Directors**

##### **A Transition Provisions**

Each person nominated as an officeholder or Director on the ASIC Form 201 "*Application for registration as an Australian company*" becomes a Director of the Company at and from the commencement of its registration as a Company. Each nominated officeholder, Director and the Chair shall continue as the "transition" members of the governing body of the Company until the first Annual General Meeting, which must be held within 18 months following the registration as a Company. At that AGM, all transition members of the governing body of the Company shall retire but shall be eligible for re-election/appointment under the provisions of this Constitution, with the transition period prior to the first AGM not being counted as a term of directorship for aforementioned "transition" members of the governing body for the purposes of Article 49 - *Tenure of Directors*.

##### **B Elected/Appointed Directors**

A person becomes a Director (other than the Director appointed pursuant to Article 46(b)) where a Director retires pursuant to Article 49(a), when:

- (a) the Board appoints a Director to fill a casual vacancy pursuant to Article 48(a); or

- (b) the Company, pursuant to Article 30(b)(iii) at an Annual General Meeting or, pursuant to Article 58(j)(iv)B at a General Meeting, fills the vacancy by election of Directors.
- (c) No person, other than a person nominated by the Board pursuant to Article 46(b) or appointed pursuant to Article 48(a), is eligible to be elected as a Director pursuant to Article 47(b) unless a **nomination** (in the form determined by the Board from time to time) is:
  - (i) signed by two authorised Officers representative of a Full Member; and
  - (ii) accompanied by the consent of the nominee to act; and
  - (iii) given to the Company at least seven days (or such other time as is allowed for by the Board) before the meeting.
- (A) The nomination may be accompanied by a written statement (referred to as a “**qualification résumé**”) containing not more than one hundred words, signed by the nominee setting out the relevant skills and attributes, as prescribed by the Board from time to time pursuant to Article 53(e) which, in the opinion of the nominee, constitutes his or her qualifications for the position of Director of the Company.
- (d) If on the close of nominations, the number of candidates for election as Directors is equal to or less than the number of vacancies, the nominated candidates shall be declared elected at the AGM and the Board may fill the remaining positions (or sufficient a number required to form a quorum required by this Constitution) as set out in Articles 46(b) and 48(a).
- (e) If the number of candidates for election as Directors is greater than the number of vacancies on the Board, a ballot must be held for the election.
- (f) If a ballot is required, balloting lists must be prepared listing the names of the candidates in the order drawn by lot.
- (g) Each Member Delegate entitled to vote may cast the number of votes equal to the number of vacancies, provided that no person so voting may cast more than one vote in favour of each candidate.
- (h) The candidates receiving the greatest number of votes in their favour must be declared by the Chair of the meeting to be elected as Directors.
- (i) In the event of a tie for a board position, the result will be decided by lot.

**46. Board may appoint a Director to fill a casual vacancy**

- (a) Where a Director retires or otherwise ceases to be a Director:
  - (i) prior to the time at which that person would have been required to retire under Article 49; or
  - (ii) pursuant to Article 50(a-h);

the **Board may appoint a person to fill the casual vacancy**, provided that the person appointed to fill the vacancy meets the eligibility requirements that apply under this Constitution pursuant to Article 46(e) in relation to the Company's appointment of a person to that position.

- (b) A person appointed by the Board to fill a vacancy under Article 48(a) holds office until the conclusion of the AGM next following their appointment, and is eligible for election at that AGM pursuant to the requirements of Article 46(a) and 47(c).

#### **47. Tenure of Directors**

- (a) A Director, other than the Director appointed pursuant to Article 46(b) and 48(a), must retire from office three AGMs following that Director's last election or appointment.
- (b) A Director who retires under Article 49(a) holds office as Director until the end of the meeting at which the Director retires, and is eligible for re-election pursuant to the requirements of Articles 46(a) and 47(c).
- (c) Subject to the requirements of the Corporations Act, the Board may, on application of a Director, grant that **Director leave of absence** from the Board, for a period determined by the Board, but not beyond their designated tenure pursuant to Article 49(a). As Director leave of absence is not a formal casual vacancy, the Director cannot be replaced during the term of the leave of absence subject to Article 58(j)(iv).
- (d) Any Director who has held office for a continuous period of six years or more must stand down from office for at least one year after which time they may again be eligible for appointment or election pursuant to Article 46(b), 47 and the tenure terms of Article 49, except the Board may recommend to the AGM to extend the term of office of a Board member if needed to meet identified skills needs or for reasons of succession. A Director recommended under this Article will continue for a further term of one year unless the AGM at which the recommendation is made determines otherwise.

#### **48. Termination of office**

A person ceases to be a Director, and also ceases to occupy that position, if the person:

- (a) fails to attend three consecutive Board meetings without the consent of the Board;
- (b) resigns by notice in writing to the Company;
- (c) is removed from office under the Corporations Act;
- (d) is, or becomes a paid employee (whether full-time or part-time) of, or holds paid employment in the Company (noting that acting as a volunteer worker, or employed in a voluntary capacity or position within the Company, does not disqualify a person from being a Director of the Company);
- (e) becomes an insolvent under administration;
- (f) becomes of unsound mind or a person whose property is liable to be dealt with under a law about mental health; or
- (g) is not permitted to be a Director, or to manage a corporation, pursuant to the Corporations Act;
- (h) is removed from office by resolution of the Members entitled to attend and vote in General Meeting.
- (i) retires pursuant to Article 49(a) and fails to gain relevant nomination for another term pursuant to Articles 46(a) and 47(c);
- (j) retires pursuant to Article 49 or ceases to hold office under Article 48(b), and is not re-elected or re-appointed;
- (k) is directly or indirectly interested in any (or any proposed) contract, agreement or arrangement with the Company and fails to declare the nature of the interest in the manner required pursuant to Article 51 or by the Corporations Act.
- (l) in the opinion of the Board, is:
  - (i) in **breach of, infringes, or has refused or wilfully neglected to comply with a provision of this Constitution** or a provision of any governing policies, guidelines, procedures, protocols, practices or processes prescribed by the Board from time to time (pursuant to their powers under Article 53); or
  - (ii) by conduct, act or omission appears to the majority of Directors to be **prejudicial to the interests or reputation of the Company** or is not consistent with the aims, objectives and values of the Company,

and, a majority of Directors at a meeting of the Directors specifically called for that purpose, suspend that Director from office (noting that the suspended Director during the period of suspension shall forego his responsibilities as a Director).

Within fourteen days of the suspension, the Directors must call a General Meeting, at which the Members, by a poll of Members, may either confirm the suspension and remove the Director from office in accordance with Article 20, as if it applies to a Director, or annul the suspension and reinstate the Director.

#### **49. Interests of Directors**

- (a) A Director is not disqualified by reason only of being a Director (or the fiduciary obligations arising from that office) from:
- (i) holding an office or place of profit or employment in any related body corporate of the Company being a company, body corporate, trust or entity promoted by the Company or in which it has an interest;
  - (ii) being a Member, creditor or otherwise be interested in any body corporate (including the Company), partnership or entity, except auditor of the Company;
  - (iii) entering into any agreement or arrangement with the Company; or
  - (iv) acting in a professional capacity (or being a Member of a firm which acts in a professional capacity) for the Company, except as auditor of the Company.
- (b) Each Director must comply with the Corporations Act in relation to the disclosure of the Director's interests.
- Directors and officers must...*
- "...give the other directors notice of the interest" (*Corporations Act 2001 s.191(1)*) and...
  - "give details of the nature and extent of the interest; and the relation of the interest to the affairs of the entity; and be given at a directors' meeting as soon as practicable after the director becomes aware of his or her interest in the matter. The details must be recorded in the minutes of the meeting." (*Corporations Act 2001 s.191(3)*)
- (c) A Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting nor vote on the matter, except where permitted by the Corporations Act.
- "The director may be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that: (a) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the company; and (b) states that those directors are satisfied that the interest should not disqualify the director from voting or being present" (Corporations Act 2001 s.195(2))*

- (d) If a Director has an interest in a matter, then subject to Article 51(c) and Article 51(e) and this Constitution:
  - (i) that Director may be counted on in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting;
  - (ii) that Director may participate in and vote on matters that relate to the interest;
  - (iii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
  - (iv) the Director may retain the benefits under any transaction that relates to the interest even though the Director has the interest; and
  - (v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (e) If an interest of a Director is required to be disclosed under Article 51(b), Article 51(d)(iv) applies only if the interest is disclosed before the transaction is entered into.

## Board

### 50. Composition and role of Board

- (a) The Board will comprise of the Directors of the Company appointed pursuant to Article 47 and, if so appointed, a Director pursuant to Articles 46(b).
- (b) Without limiting the general powers of the Board pursuant to Article 53, the generic **role, functions and activities of the Board** include (but are not necessarily limited) to:
  - (i) formulate the Company's strategic direction;
  - (ii) determine the Company's governance policies (pursuant to Article 53(e));
  - (iii) appoint and work with and through the CEO (pursuant to Article 64);
  - (iv) monitor and supervise the Company's CEO and organisational and financial performance and risk and compliance management processes; and

(vi) provide accountability to the Members

in pursuit of the furtherance of the objects of the Company.

## Powers of the Board

### 51. General powers of the Board

- (a) The Board is **responsible for the direction, management and conduct of the affairs, and the pursuit of the furtherance of the purpose and objects of the Company**, and **may exercise**, to the exclusion of the Company in general meeting, **all powers of the Company** which are not, by the law or this Constitution, required to be exercised by the Company in General Meeting provided that no resolution of the Company in General Meeting shall invalidate any prior act of the Board.
- (b) Subject to the Corporations Act and this Constitution, **the Board has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper direction, management and control of the affairs of the Company** including those powers pursuant to Article 5(b).
- (c) A power of the Board can only be exercised by a resolution passed at a meeting of the Board in accordance with Article 58, a resolution passed by signing a document in accordance with Article 57, or in accordance with a delegation of the power under Article 55 or 56. A reference in this Constitution to the Company exercising a power by a resolution of the Board includes an exercise of that power in accordance with a delegation of the power under Article 55 or 56.
- (d) Except in the case of a specific delegation of authority pursuant to Article 55, the Board shall approve any and all **public statements** made on behalf of the Company by any Member, duly appointed director, office bearer, officer, employee, delegated person, persons, or committee and/or agent of the Company, prior to that person making such statement.
- (e) Pursuant to Article 53(b), the Board shall have the power to establish **governing policies** relating to the internal control, administration and management of the Company that give effect to the Constitution, the achievement of the objects of the Company and to regulate the business of the Company. The Board may at any time rescind, modify, change or vary any of the governing policies and make others to replace them in accordance with the changing needs and requirements of the Company. Such governance policies will be those deemed necessary or expedient or convenient for the proper conduct, control and governance of the Company. The governing policies must not be contrary to this Constitution or the Corporations Act.



- (f) The Board shall set out its governing policies in the Company's **Governance Charter**. The charter may also specify requirements for reporting to Commonwealth agencies in relation to any funds raised and held on a specific Gift Fund established and, maintained by the Company and reporting of distributions made from that Gift Fund so as to maintain any endorsement of the Company as an income tax exempt charity or public benevolent institution and any endorsement of the Company as a deductible gift recipient under Commonwealth income tax legislation.
- (g) The Members, directors and office bearers, board committees and their members, officers, employees, contractors and agents of the Company shall be bound by and must comply with any governing policies in force from time to time.
- (h) The Board shall have authority to interpret the meaning of the Articles in this Constitution and any other matter relating to the Company on which this Constitution is silent, subject to any amendment of the Constitution made pursuant to Article 69.

## **52. Execution of documents**

- (a) If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by either of:
  - (i) two Directors; or
  - (ii) one Director and the Secretary; or
  - (iii) two persons as the Board may appoint for that purpose;and that witnessing is sufficient for all purposes that was affixed by those signatures by authority of the Board.
- (b) The Company may execute a document without a common seal provided the dealing or deed is signed and attested by the signatures either of:
  - (i) two Directors; or
  - (ii) one Director and the Secretary; or
  - (iii) two persons as the Board may appoint for that purpose;and that attestation is sufficient for all purposes that was affixed by those signatures by authority of the Board.

*This provision is in accordance with provisions of the Corporations Act (2001) s.123(1): A company may have a common seal. If a company does have a common seal, the company must set out on it the company's name; and the company's ACN. Note 1: A company may ...execute documents without using a seal (see s.126 and s.127).*

- (c) The Board may determine the manner in which, and the persons by whom, cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable or transferable instruments [including electronic and internet payments and transfers] in the name of, or on behalf of the Company, and receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed.

### 53. Delegation authority of the Board

- (a) The **Board may delegate** any of its powers to:
  - (i) a committee of the Board,
  - (ii) a Director (including an Office Bearer),
  - (iii) an employee of the Company; or
  - (iv) any other person considered by the Board to be reliable and competent to fulfil the powers;

noting that the Directors remain responsible for the exercise of the power by the delegate as if the power had been exercised by the Directors themselves.

*(Corporations Act 2001 s.190(1))*

- (b) A delegation of those powers may be made for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power so delegated.  
*Directors have the right and entitlement to delegate any of their powers to a committee, a director, a company employee, any other person (Corporations Act 2001 s.198D) [remembering however that] ...a director is responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves (Corporations Act 2001 s.190(1))*
- (c) The Board may, subject to this Constitution, determine, or vary any determination of, the powers, functions and responsibilities of the committee or delegate.
- (d) A committee or delegate must exercise the powers delegated in accordance with any directions of the Board.
- (e) Subject to the terms of appointment or reference of a committee, Article 58 applies with the necessary changes to meetings of a committee of the Board.

### 54. Attorney or agent

- (a) The Board may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to the terms of appointment of an attorney or agent of the Company, the Board may revoke or vary that appointment at any time, with or without cause.
- (b) The Board may delegate any of their powers (including the power to delegate) to an attorney or agent. The Board may revoke or vary any power delegated to an attorney or agent.

## Proceedings of Directors

### 55. Written resolutions of Directors

- (a) The **Board may pass a resolution without a Board meeting** being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A resolution under Article 57(a) may consist of several documents in the same form each signed by one or more Directors and is effective when signed by the last of the Directors constituting the majority. A document produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of Article 57(a) and is taken to be signed when received by the Company in legible form.

### 56. Board Meetings

- (a) The **Board may meet, adjourn and otherwise regulate their meetings** as it thinks fit on dates and at a location determined by the Board.
- (b) The Chair or any three Directors may **call** a Board meeting at any reasonable time. On request of the Chair or any three Directors, the Secretary must call a meeting of the Directors.
- (c) **Notice** of a Board meeting must be given to each Director (except a Director on leave of absence approved by the Board) and the Chief Executive Officer not less than seven days (or other period as the Directors may agree) prior to the proposed meeting specifying the time, place and general nature of business to be transacted at such meeting. Notice of a Board meeting may be given in person or by post or by electronic means.

- (d) Notwithstanding Article 58(c), where the Chair considers an emergency exists, they may take steps as they think necessary to notify as many Directors as practicable of the proposed meeting to consider matters related to the emergency (and no other business) with less than seven days notice and by the most expedient means available.
- (e) A Director may consent to receiving shorter notice of a Board meeting by giving notice to that effect to the Company in person or by post or by electronic means.
- (f) A Director who attends a Board meeting waives any objection that person may have to a failure to give notice of the meeting.
- (g) Anything done (including the passing of a resolution) at a Board meeting is not invalid solely because either or both a person does not receive notice of the meeting or the Company does not give and/or the person does not receive notice of the meeting.
- (h) For the purposes of the Corporations Act, each Director, by consenting to be a Director, or by reason of the adoption of this Constitution, consents to the **use of information or communication technology**, which permits participating Directors to communicate with each other at a Board meeting and to record the business of the meeting.
  - (i) a Director may withdraw the consent given under this Article in accordance with the Corporations Act.
- (i) If a Board meeting is held in two or more places linked together by any technology:
  - (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the Chair of the meeting that the Director is discontinuing her or her participation in the meeting; and
  - (ii) the Chair of that meeting may determine at which of those places the meeting will be taken to have been held.
- (j) A **quorum** for a Board meeting is three Directors entitled to vote on a resolution that may be proposed at that meeting or such greater number as may be fixed by the Board from time to time. A quorum for a Board meeting must be present at all times during the meeting. Each individual present may only be counted once towards a quorum.
  - (i) No formal business shall be transacted or resolutions passed by the Board unless a quorum is present and if within half an hour of the time appointed for the meeting a quorum is not present the meeting stands adjourned to the same place and at the same hour of the same day in the following week.

- (ii) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting shall be dissolved.
- (iii) The **attending Directors may act notwithstanding any vacancy in the Board** as long as there is a the number required to form a quorum required by this Constitution;
- (iv) If the number of Directors in office at any time falls below the number required to form a quorum required by this Constitution, the remaining Directors shall not act in the affairs of the Company, other than to:
  - A appoint suitable and eligible persons to fill casual Director vacancies pursuant to Article 48; or otherwise
  - B call a general meeting pursuant to Article 28(a) for the purpose of the election of additional Directors until the number of Directors is made up to at least three directors, with at least two of those Directors ordinarily resident in Australia, or otherwise pursuant to Article 46(d).
- (k) The Chief Executive Officer:
  - (i) shall, unless otherwise excused or directed by the Board, attend all Board meetings.
  - (ii) does not have any right to vote at Board meetings.
- (l) The Secretary (or their delegate):
  - (i) shall, unless otherwise excused or directed by the Board, attend all Board meetings to fulfil their delegated governance administrative functions pursuant to Article 65.
  - (ii) does not have any right to vote at Board meetings, in the capacity as Secretary. If the Secretary is also a Director, that person maintains their right to vote in their capacity as Director.
- (m) Anything done (including the passing of a resolution) at a Board meeting is not invalid solely because of non-attendance by the Chief Executive Officer or Secretary.
- (n) Except for the provisions of Articles 58 (k) & (i), the Board shall ordinarily hold all Board meetings as *in camera* sessions, but may invite, at their own discretion, any person or persons as attendees to any part of the Board meeting who may be invited to make representations or, by permission of the Chair, speak (either in person or via telecommunication means if thought most practical and

appropriate) on agenda items to provide reports, advice, counsel and information or answer questions on matters as requested by Board members.

**57. Chairing Board Meetings**

- (a) Subject to Article 59(b) the Chair of the Board must chair each Board meeting.
- (b) If at a Board meeting:
  - (i) there is no Chair; or
  - (ii) the Chair is not present within fifteen minutes after the time appointed for the holding of a Board meeting or is not willing to chair all or part of that meeting,

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

**58. Board resolutions**

- (a) A resolution of the Board is passed if more votes are cast by Directors entitled to vote in favour of the resolution than against it.
- (b) Subject to Article 51 and this Article 60, each Director present in person has **one vote** on a matter arising at a Board meeting.
- (c) Subject to the Corporations Act, in case of an equality of votes on a resolution at a Board meeting, the Chair of that meeting has a casting vote on that resolution in addition to any vote the Chair has in his or her capacity as a Director in respect of that resolution, provided that the Chair is entitled to vote on the resolution.

**59. Valid proceedings**

- (a) An act at any Board meeting or a committee of the Board or an act of any person acting as a Director is not invalidated by:
  - (i) a defect in the appointment or continuance in office of a person as a Director, a Member of the committee or of the person so acting; or
  - (ii) a person so appointed being disqualified or not being entitled to vote,

if that circumstance was not known by the Board, committee or person (as the case may be) when the act was done.

## Office Bearers of the Board

### 60. Chair

- (a) At the first meeting of the Board after the Annual General Meeting in each year, the Board shall appoint a person independent of the Company as a Director to the office of Chair pursuant to Article 46(b). The Chair will hold office until the next Annual General Meeting but is eligible for re-appointment.
- (b) A person who is elected Chair is, for the purposes of this Constitution, first and foremost a Director who has the same tenure as any other Director pursuant to Article 49. If the Chair retires as a Director or otherwise ceases to be a Director, the person ceases to be the Chair at which time the Board shall appoint another person independent of the Company as a Director to the office of Chair pursuant to Article 46(b).
- (c) The person appointed Chair, in addition to their Director role, has all the corresponding authorities delegated in this Constitution and those further delegated by the Board pursuant to Articles 53(e) and 62(d),(e)&(f).
- (d) The Board may, subject to this Constitution, determine, or vary any determination of, the powers, functions, responsibilities, and subject to Article 6, the remuneration, of the Chair.
- (e) The Board may delegate any of its powers to the Chair for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power delegated to the Chair.
- (f) The Chair must exercise the powers delegated to him or her in accordance with any directions of the Board.
- (g) The Board may terminate the Chair's appointment at any time with a two-thirds majority vote.

### 61. Deputy Chair

- (a) At the first meeting of the Board after the Annual General Meeting in each year, the Board may elect one of the Directors from among their number to the office of Deputy Chair (if the Board deems desirable and/or necessary). The Deputy Chair will hold office until the next Annual General Meeting but is eligible for re-election.
- (b) A person who is elected Deputy Chair is for the purposes of this Constitution first and foremost a Director who has the same tenure as any other Director pursuant to Article 49. If the Deputy Chair retires as a Director or otherwise ceases to be a

Director, the person ceases to be the Deputy Chair at which time the Board shall elect one of the Directors from among their number to the office of Deputy Chair pursuant to Article 63(b).

- (c) The person elected Deputy Chair, in addition to their Director role, has all the corresponding authorities delegated in this Constitution and those further delegated by the Board pursuant to Articles 53(e) and 63(d),(e)&(f).
  - (d) The Board may, subject to this Constitution, determine, or vary any determination of, the powers, functions, responsibilities, and subject to Article 6, the remuneration, of the Deputy Chair.
  - (e) The Board may delegate any of its powers to the Deputy Chair for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power delegated to the Deputy Chair.
  - (f) The Deputy Chair must exercise the powers delegated to him or her in accordance with any directions of the Board.
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## CEO

### **62. Chief Executive Officer**

- (a) The CEO is appointed by the Board on terms and conditions (including as to remuneration) as determined by the Board, and may be removed by the Board (subject to any contract of employment between the Company and the CEO).
- (b) The CEO's functions are, subject to any additional or variant directions or further determination of the powers and responsibilities of the CEO by the Board, (but not limited) to:
  - (i) advise the Board in relation to, and provide assurance to the Board of the proper management, conduct and business affairs and operations of the Company;
  - (ii) ensure that advice and information is available to the Board to enable informed decisions to be made;
  - (iii) cause decisions of the Board to be implemented;
  - (iv) manage the day to day operations of the Company;
  - (v) be responsible for the employment, management, supervision, direction and dismissal of other (paid or voluntary) staff of the Company;



- (vi) speak on behalf of the Company if the Chair or the Board agrees;
  - (vii) ensure that records and documents of the Company are properly prepared and kept for the purposes of the *Corporations Act 2001*, the Constitution and any other written law; and
  - (viii) perform any other function or exercise any other power specified or delegated by the Board.
- (c) The CEO may (subject to any other direction of the Board) delegate to (paid or voluntary) staff of the Company a function or power delegated to the CEO under Article 63(b)(viii), but that power or function may not be further delegated.

## Company Secretary

### 63. Secretary

- (a) The Board **shall** appoint a **Company Secretary** (who may be either a Director, an employee, a Member or any other eligible person), who shall hold office for any period and on such terms and conditions (including as to remuneration) as the Board determines and who may vary or revoke any determination of, the powers, functions, responsibilities of the Secretary.
- (b) Subject to any agreement between the Company and the Secretary, the Board may vary or terminate the appointment of a Secretary at any time, with or without cause.
- (c) The person appointed Secretary has all the corresponding authorities delegated in this Constitution and those further delegated by the Board pursuant to Articles 53(e) and 65(a).
- (d) The Board may, by resolution, delegate some or all of the above duties to another person pursuant to Article 55 not acting formally as the Secretary of the Company. The Secretary may also, delegate some or all of the above duties to another person from time to time.
- (e) Unless otherwise decided by the Board, the Secretary shall also undertake any duties of a Public Officer as required by any relevant bodies.

#### **CORPORATIONS ACT 2001 - PART 1.5**

##### **SECT 1.5.5 - 5.4 Company secretaries**

- *A public company must have a company secretary.*
- *The directors appoint the company secretary.*
- *A company secretary must be at least 18 years old and ordinarily reside in Australia.*
- *A company secretary must consent in writing to holding the position of company secretary.*
- *The company must keep the consent and must notify ASIC of the appointment.*

- *The same person may be both a director of a company and the company secretary.*
- *Generally, a company secretary may resign by giving written notice of the resignation to the company. A company secretary who resigns may notify ASIC of the resignation. If the company secretary does not do so, the company must notify ASIC of the company secretary's resignation.*
- *The company secretary is an officer of the company and, in that capacity, may be subject to the requirements imposed by the Corporations Act*  
[http://www.austlii.edu.au/au/legis/cth/consol\\_act/ca2001172/](http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/)*on company officers.*
- *The company secretary has specific responsibilities under the Corporations Act, including responsibility for ensuring that the company:*
  - *notifies ASIC about changes to the identities, names and addresses of the company's directors and company secretaries ; and*
  - *notifies ASIC about changes to the register of members; and*
  - *responds, if necessary, to an extract of particulars that it receives and that it responds to any return of particulars that it receives.*

## Treasurer

### 64. Treasurer

- (a) The Board may appoint a **Treasurer** (who may be either be a Director, an employee, a Member or any other person) who shall hold office for any period and on such terms and conditions as the Board determines and who may vary or revoke any determination of, the powers, functions, responsibilities of the Treasurer. The office of Treasurer need only be created if the Board deem (at their discretion) the office necessary or desirable for the proper management of the affairs of the Company.

*Note: there is no requirement under the Corporations Act for a company to have a Treasurer.*

- (b) The Treasurer (if appointed) may:
- (i) be called upon to present the annual financial statements of the Company at the AGM and undertake any other formally delegated financial governance functions the Board deem necessary and applicable to the role;
  - (ii) preside over and chair any audit or finance committee(s) (where established from time to time pursuant to Article 55) which shall provide recommendations to the Board regarding the governance of Company financial management, security, accuracy and transparency.
- (c) The Board may, by instrument in writing, delegate some or all the above duties to another person in accordance with Article 55 not acting formally as the Treasurer. The Treasurer may also, delegate some or all of the above duties to another person from time to time.
- (d) The Treasurer must exercise the powers delegated to him or her in accordance with any directions of the Board.

## Minutes

### 65. Minutes

- (a) The Directors shall cause minutes to be kept and entered up in accordance with the Corporations Law:
  - (i) of the names of the Directors present at each meeting of the Directors and of any Committee; and
  - (ii) of all resolutions and proceedings of General Meetings and of meetings of Directors and of Committees.
- (b) The minutes are to be signed by the Chair of the meeting at which the proceedings were held or by the Chair of the next succeeding meeting.

## Indemnity and Insurance

### 66. Indemnity and insurance

- (a) To the extent permitted by law, the Company may indemnify each relevant officer against a liability of that person and the legal costs of that person.  
*Corporations Act 199A*  
*(1) A company...must not exempt a person...from a liability to the company incurred as an officer...of the company.*  
*...indemnity for liability (other than for legal costs) [is] not allowed [in the following circumstances]...*  
*(2) A company must not indemnify a person...against any of the following liabilities incurred as an officer...of the company:*
  - (a) a liability owed to the company;*
  - (b) a liability for a pecuniary penalty order under s.1317G or a compensation order under section 961M, 1317H, 1317HA or 1317HB;*
  - (c) a liability that is owed to someone other than the company...and did not arise out of conduct in good faith.*
- (b) The indemnity under Article 68(a):
  - (i) is enforceable without the relevant officer having first to incur any expense or make any payment;
  - (ii) is a continuing obligation and is enforceable by the relevant officer even though the relevant officer may have ceased to be an Officer of the Company; and
  - (iii) applies to liabilities and legal costs incurred both before and after this Article became effective.

- (c) To the extent permitted by law, the Company may make a **payment** (whether by way of advance, loan or otherwise) to a relevant officer **in respect of legal costs** of that person.

*Corporations Act 199A*

*...indemnity for legal costs [is] **not allowed** [in the following circumstances]...*

- (3) *A company...must not indemnify a person...against legal costs incurred in defending an action for a liability incurred as an officer of the company if the costs are incurred:*
- (a) *in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under subsection (2); or*
  - (b) *in defending or resisting criminal proceedings in which the person is found guilty; or*
  - (c) *in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or*
  - (d) *in connection with proceedings for relief to the person under the Corporations Act in which the court denies the relief (except costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order). This does include proceedings by ASIC for an order under s.206C, 206D, 206E or 206EAA (disqualification), s.232 (oppression), section 961M, 1317E, 1317G, 1317H, 1317HA or 1317HB (civil penalties) or s.1324 (injunction).*

*The company may be able to give the person a loan or advance in respect of the legal costs (see s.212)*

- (d) To the extent permitted by law, the Company may:

(i) enter into, or agree to enter into; or

(ii) pay, or agree to pay, a premium for

a contract **insuring** a relevant officer against a Liability of that person and the legal costs of that person. Any such premium in relation to an Officer is in addition to, and not regarded as part of, any remuneration approved by Members under this Constitution.

*Corporations Act 199B*

- (1) *A company...must not pay, or agree to pay, a premium for a contract insuring a person who is or has been an officer of the company against a liability (other than one for legal costs) arising out of:*
- (a) *conduct involving a wilful breach of duty in relation to the company; or*
  - (b) *a contravention of s.182 (misuse of position) s.183 (misuse of information).*

- (e) To the extent permitted by law, the Company may enter into an agreement or deed with a relevant officer or a person who is, or has been, an Officer of the Company or a subsidiary of the Company, under which the Company must do all or any of the following:

(i) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;

(ii) indemnify that person against any liability and legal costs of that person;

(iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of legal costs of that person; and

- (iv) keep that person insured in respect of any act or omission by that person while a relevant officer or an Officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

## Amendment of Constitution

### 67. Amendment of Constitution

- (a) This Constitution, including the statement of objects in Article 5(a), may be altered, rescinded and/or added to only by a Special Resolution passed by the Company in General Meeting. The change must be consistent with the Corporations Act and the rest of the Constitution.
- (b) No alteration which may affect the tax exempt status of the income of the Company shall be made to or in the Constitution unless not less than twenty-eight (28) days' prior written notice specifying the alterations proposed to be made shall have been given to the Commissioner of Taxation.  
*This is to ensure that income of the Company which attracts a tax concession is used for the purpose for which the Company was granted tax exempt status.*
- (c) The Company must apply for registration of the changes within 14 days of the Special Resolution pursuant to s.136(5) of the Corporations Act and the change will only take place once it is registered with ASIC.  
*Corporations Act s.136(5): A public company must lodge with ASIC a copy of a special resolution adopting, modifying or repealing its Constitution within 14 days after it is passed. The company must also lodge with ASIC within that period if the company modifies its Constitution, a copy of that modification.*

## Dispute and Grievance Resolution

### 68. Dispute and Grievance Resolution Procedure and Appeal

- (a) If any Member has **a grievance with, or disputes any decision made by the Company which directly affects that Member**, the Member may write to the Secretary of the Company setting out the details of the decision made and the basis of the grievance of the Member.
  - (i) The Secretary shall, within 14 working days, acknowledge the Member's communication and set out the reasons for the decision.
  - (ii) If the Member is dissatisfied with that explanation, the Member may request that the Board (through a committee or delegate), mediate the grievance or dispute (via telecommunication means if thought most practical and appropriate), within a period of not more than two calendar months.

- (iii) The Member, if dissatisfied with the outcome of any such mediation, may at any time withdraw from the process and request the Board to meet with the Member at such place as the Board may agree (including via telecommunication means if thought most practical and appropriate), to endeavour to resolve the matter. Subject to the inherent jurisdiction of the judicial system, the decision of the Board shall be final and binding.
- (b) If any Member has a **grievance arising with regard to the interpretation of any part of this Constitution**, the Member may write to the Secretary of the Company setting out the basis of the grievance.
  - (i) The Secretary shall, within 14 working days, acknowledge the Member's communication and set out the basis of the Company's interpretation of the relevant part of the Constitution.
  - (ii) If the Member is dissatisfied with that explanation, the Member may request that the Board consider the differences in the Member's and the Company's opinions at a meeting within a period of not more than two calendar months.
  - (iii) The Secretary shall, within a further seven days after the meeting, notify the Member of the outcome of the Board's consideration. Subject to the inherent jurisdiction of the judicial system, the decision of the Board shall be final and binding.

## Member Communication with the Board

### 69. Member Communication with the Board

- (a) A Member may comment on, and generally input suggestions and counsel on, any matter **in relation to the direction, management and control of the affairs of the Company** with the Board that the Member sees fit to raise.
- (b) The Member shall adhere to the following procedure for raising a matter with the Board:
  - (i) The comment, suggestion or counsel must be clearly stated in writing, addressed to the Secretary, signed by the Member.
  - (ii) The Secretary shall ensure provision on the agenda of the next convenient Board meeting for the correspondence relating to the matter to be considered by the Board at that Board meeting.

- (iii) The Secretary shall inform the Member in writing of the outcome of the Board's consideration of the matter within seven days of the meeting at which the matter was discussed.
- (iv) Following receipt of notification of the outcome of any Board deliberation of the matter, the Member may make a request, in writing, to be invited to attend (either in person at their own expense or via telecommunication means if thought most practical and appropriate) and address the Board (if the Member has not already done so) as an **attendee** at the next Board meeting.  
***Note: the Board can accept or reject the request for invitation for the Member to address the Board at their absolute discretion pursuant to Article 58(n).***

## Notices

### 70. Notices to Members

- (a) The Company may give notice to a Member by any of the following means in the Board's discretion:
  - (i) delivering it to that Member or **person**;
  - (ii) leaving it at, or sending it by **post** to, the address of the Member in the Register or the alternative address (if any) nominated by that Member or person for that purpose;
  - (iii) sending it to the **fax** number or electronic address (if any) nominated by that Member or person for that purpose;
  - (iv) if permitted by the Corporations Act, notifying that Member of the notice's availability by an **electronic means** nominated by the Member for that purpose; or
  - (v) any **other means** permitted by the Corporations Act.
- (b) Where a Member does not have an address in the Register or where the Board believes that a Member is not at the address in the Register, the Company may give Notice to that Member by exhibiting the Notice at the registered office of the Company for a period of forty eight (48) hours, unless and until the Member gives the Company written notice of an address for the giving of Notices.
- (c) The Company must send all documents to a Member whose address for Notices is not within Australia by air-mail, air courier or electronic means.

- (d) Any Notice required or allowed to be given by the Company to one or more Members by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

#### **71. Notice to Directors**

The Company may give notice to a Director by:

- (a) delivering it to that person;
- (b) sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person for that purpose;
- (c) sending it to the fax number or electronic address (if any) nominated by that person for that purpose; or
- (d) any other means agreed between the Company and that person.

#### **72. Notice to the Company**

A person may give notice to the Company by:

- (a) leaving it at, or by sending by post to, the registered office of the Company;
- (b) leaving it at, or by sending it by post to, a place nominated by the Company for that purpose;
- (c) sending it to the fax number at the registered office of the Company nominated by the Company for that purpose;
- (d) sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (e) any other means permitted by the Corporations Act.

#### **73. Time of service**

- (a) A notice sent by post or air-mail is taken to be given on the day after the date it is posted.
- (b) A notice sent by fax or other electronic transmission is taken to be given when the transmission is sent provided that in the case of notice to the Company or a Director, the sender meets any action required by the recipient to verify the receipt of the document by the recipient.



- (c) A notice given in accordance with Article 72(a)(iv) is taken to be given on the day after the date on which the Member is notified that the Notice is available.
- (d) A notice given in accordance with Article 72(b) is taken to be given at the commencement of the 48 hour period referred to in that Article.
- (e) A certificate by a Director or Secretary to the effect that a notice by the Company has been given in accordance with this Constitution is conclusive evidence of that fact.

#### **74. Notice requirements**

The Board may specify, generally or in a particular case, requirements in relation to notices given by any electronic means, including requirements as to:

- (a) the classes of, and circumstances in which, Notices may be sent;
- (b) verification (whether by encryption code or otherwise); and
- (c) the circumstances in which, and the time when, the notice is taken to be given.

## **Accounts**

#### **75. Financial and Accounting Records and Inspection of Records**

- (a) The Board shall cause proper and accurate written financial and accounting records to be kept
  - (i) of all money received and spent by the Company and the matter in respect of which such receipt and expenditure takes place, and of the assets and liabilities of the Company and of all relevant activities involving the Company;
  - (ii) in such a manner as will enable true and fair financial statements to be prepared and audited;
  - (iii) for at least seven years after the transactions covered by the records are completed.  
*Corporations Act 2001 s.286.*
- (b) Except as otherwise required by the Corporations Act, the Board shall from time to time determine, pursuant to Article 53(e), at what times and places and under what conditions, arrangements or regulations and to what extent the records, books and other documents of the Company (other than legal documents related to Court action or current litigation, personnel files and documents and other

privileged, legally restricted or commercial-in-confidence information), including minutes of all board meetings and general meetings of the Company, shall be open to **inspection by a Member** of the Company (who must be up to date with all financial obligations to the Company at the time of request).

- (c) The records, books and other documents (financial or otherwise) of the Company and minutes of all board meetings and general meetings of the Company are not to be electronically or manually **copied** (except for hand-written notations) and/or removed from the principal place of administration of the Company and shall be kept in the custody or under the control of the Secretary or their delegate (except as otherwise provided by this Constitution, the Corporations Act or the law) and remain the property of the Company to be used solely for the purposes of the Company pursuant to the matters required as described in this Constitution, the Corporations Act or the law.
- (d) Each **Director** of the Company has the **right of access** personally, to the records, books and all other documents (financial or otherwise) of the Company at all reasonable times for the purposes of their duties pursuant to Article 48(f), while specifically acknowledging their duty pursuant to Article 46(f)(vi), and may ask those records, books and documents to be tabled at a Board meeting if necessary.
- (e) The Director may make **copies** of those records and other documents for the purposes of a legal proceeding to which the person is a party; or that the person proposes in good faith to bring; or that the person has reason to believe will be brought against them.

*Corporations Act 2001 s.290*

*Corporations Act 2001 s.198F*

## Winding up

### 76. Winding Up

On a winding up of the Company, any surplus assets of the Company remaining after the payment of its debts must not be paid to or distributed among the Members, but must be given or transferred:

- (a) to one or more bodies corporate, associations or institutions selected by the Member Delegates by resolution at or before the dissolution of the Company:
  - (i) having objects similar to the objects of the Company; and
  - (ii) whose constitution prohibits the distribution of its or their income or property to no lesser extent than that imposed on the Company under Article 6; and

(iii) to which income tax deductible gifts can be made; or

if there are no bodies corporate, associations or institutions which meet the requirements of this Article 78(a)(i)-(iii),

(iv) to one or more bodies corporate, associations or institutions selected by the Member Delegates by resolution at or before dissolution of the Company, the objects of which are the promotion of charity and to which gifts allowable deductions under the Income Tax Assessment Act 1997 (Cwlth); or

(b) if the Members do not make a selection pursuant to Article 78(a) for any reason

(i) to one or more bodies corporate, associations or institutions meeting the requirements of either Article 78(a) or 78(b) selected by the Board, subject to Board obtaining court approval under the Corporations Act to exercise this power.

## SCHEDULE 1

**Names and addresses of the initial Full Members of the Company are:**

- (a) Southern ACT Catchment Group Incorporated  
Erindale Business Centre  
2 Lansell Circuit,  
Wanniassa ACT 2903
- (b) Ginninderra Catchment Group Incorporated  
PO Box 446  
Holt ACT 2615
- (c) Molonglo Catchment Group Incorporated  
Unit 13, Cassidy Arcade,  
72 Monaro St,  
Queanbeyan NSW 2620
- (d) Buru-Ngunawal Aboriginal Corporation  
Traditional Custodians  
PO Box 255  
Kippax ACT 2615
- (e) Rural Landholders Association Incorporated  
PO Box 55  
Red Hill ACT 2603