

**CONSTITUTION
OF
Environmental Defenders Office Ltd**

Australian Business Number: ABN 72002 880 864

A company limited by guarantee

Table of contents

Definitions and interpretation

- 1 Definitions
- 2 Reading this constitution with the Corporations Act
- 3 Interpretation

Preliminary

- 4 Name of the company
- 5 Type of company
- 6 Limited liability of members
- 7 The guarantee
- 8 Definitions

Charitable purposes and powers

- 9 Object
- 10 Powers
- 11 Not-for-profit
- 12 Amending the constitution

Members

- 13 Membership and register of members
- 14 How to apply to become a member
- 15 Directors decide whether to approve membership
- 16 When a person becomes a member
- 17 When a person stops being a member

Dispute resolution and disciplinary procedures

- 18 Dispute resolution
- 19 Disciplining members

General meetings of members

- 20 General meetings called by directors
- 21 General meetings called by members
- 22 Annual general meeting
- 23 Notice of general meetings
- 24 Quorum at general meetings
- 25 Auditor's right to attend meetings
- 26 Representatives of members

- 27 Using technology to hold meetings
- 28 Chairperson for general meetings
- 29 Role of the chairperson
- 30 Adjournment of meetings

Members' resolutions and statements

- 31 Members' resolutions and statements
- 32 Company must give notice of proposed resolution or distribute statement
- 33 Circular resolutions of members

Voting at general meetings

- 34 How many votes a member has
- 35 Challenge to member's right to vote
- 36 How voting is carried out
- 37 When and how a vote in writing must be held
- 38 Appointment of proxy
- 39 Voting by proxy

Directors

- 40 Number of directors
- 41 Election and appointment of directors
- 42 Nomination of candidates
- 43 Process of ballot
- 44 Determination of ballot
- 45 Election of chairperson
- 46 Term of office
- 47 When a director stops being a director

Powers of directors

- 48 Powers of directors
- 49 Delegation of directors' powers
- 50 Payments to directors
- 51 Execution of Documents

Duties of directors

- 52 Duties of directors
- 53 Conflicts of interest

Directors' meetings

- 54 When the directors meet
- 55 Calling directors' meetings
- 56 Chairperson for directors meetings
- 57 Quorum at directors' meetings
- 58 Using technology to hold directors' meetings
- 59 Passing directors' resolutions
- 60 Circular resolutions of directors

Secretary

- 61 Appointment and role of secretary

Minutes and records

- 62 Minutes and records
- 63 Financial and related records

By-laws

- 64 By-laws

Notice

- 65 What is notice
- 66 Notice to the company
- 67 Notice to members
- 68 When notice is taken to be given

Financial year

- 69 Company's financial year

Indemnity, insurance and access

- 70 Indemnity
- 71 Insurance
- 72 Directors' access to documents

Regions

- 73 Establishment of Regions

Environmental Defence Fund

- 74 Rules governing the **Fund**

Winding up

- 75 Surplus assets not to be distributed to members
- 76 Distribution of surplus assets

Definitions and interpretation

1. Definitions

In this constitution:

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

company means the **company** referred to in clause 4

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

elected chairperson means a person elected by the directors to be the **company's** chairperson under clause 42

financial member means a member who owes no money to the company on any account due and payable

general meeting means a meeting of council members and includes the annual **general meeting**, under clause 22.1

initial member means a person who is named in the application for registration of the **company**, with their consent, as a proposed ordinary member of the **company**

member means unless otherwise qualified all members who have paid a membership fee

member present means, in connection with a **general meeting**, a council **member present** in person, by representative or by proxy at the venue or venues for the meeting

merging organisations means Environmental Defenders Office (ACT) Inc (ABN 32 636 009 247), Environmental Defenders Office of Northern Queensland Inc (ABN 32 017 484 326), Environmental Defenders Office Qld Inc (ABN 14 911 812 589), Environmental Defenders Office (SA) Inc (ABN 76 179 048 350), Environmental Defenders Office (Tasmania) Inc, (ABN 41 070 308 031), Environmental Defenders Office WA (Inc) (ABN 88 629 631 299), Environmental Defenders Office Ltd (ACN 002 880 864), Environmental Defenders Office NT Inc (ABN 79 824 805 673)

registered charity means a charity that is registered under the **ACNC Act**

residential requirement refers to the status of a person who resides

- i. outside greater Sydney, greater Melbourne, and South East Queensland, and
- ii. is a nominee for director of the company

special resolution means a resolution:

- i. of which notice has been given under clause 23.5(c), and
- ii. that has been passed by at least 75% of the votes cast by council **members present** and entitled to vote on the resolution, and

surplus assets means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including the costs of winding up.

2. Reading this constitution with the Corporations Act

- 2.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.
- 2.2 While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.
- 2.3 If the **company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.

2.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

3. Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions does not limit what may be included; and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

Preliminary

4. Name of the company

The name of the **company** is Environmental Defenders Office Australia Ltd (the **company**).

5. Type of company

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

6. Limited liability of ordinary members

The liability of ordinary members is limited to the amount of the guarantee in clause 7.

7. The guarantee

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

- (a) debts and liabilities of the **company** incurred before the member stopped being a member, or
- (b) costs of winding up.

8. Definitions

In this constitution, except to the extent that the context otherwise requires, words and phrases have the meaning set out in clauses 1 and 3.

Charitable purposes and powers

9. Object

The **company's** object is to pursue the following charitable purpose:

- (a) The primary object of the **company** is the public charitable purpose of conserving, protecting, enhancing and/or promoting of the natural environment or any part of it and including the natural surroundings of humans, whether affecting them as individuals or in social groupings by way of providing legal services – including assistance, advice, information, law reform commentary and policy analysis.
- (b) To achieve the primary objective the **company** may:

- a) Support community access to justice in environmental matters by providing legal services that are founded on an acknowledgement of the:
- importance of public participation and engagement of all citizens in environmental decision making;
 - inherent public interest involved in providing legal services related to environmental matters;
 - suffering, distress and disempowerment resulting from potential or actual impacts on, and damage to the environment, and from being unable to obtain legal advice, assistance and representation in relation to such matters;
 - increased barriers to obtaining legal advice, assistance and representation faced by people living in regional and remote areas, and in particular Indigenous Australians, and the need to take adequate and appropriate measures to respond to and overcome these barriers.
- (ii) Provide legal services where the protection of the natural environment interacts with the. the conservation, protection, and enhancement of the built environment and cultural heritage.
- (iii) Establish a public fund, the Environmental Defence Gift Fund (**Fund**), for the specific purpose of supporting the environmental objects of the company. The **Fund** is established to receive all gifts of money or property for this purpose and any money so received must be credited to its bank account. The **Fund** must not receive any other money or property into its account and must comply with subdivision 30-E of the *Income Tax Assessment Act 1997*.

10. Powers

Subject to clause 11, the **company** has the following powers, which may only be used to carry out its purpose(s) set out in clause 9:

- (a) the powers of an individual, and
- (b) all the powers of a **company** limited by guarantee under the **Corporations Act**.

11. Not-for-profit

- 11.1 The **company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 11.2 and 75.
- 11.2 Clause 11.1 does not stop the **company** from doing the following things, provided they are done in good faith:
- (a) pay a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**, or
 - (b) make a payment to a member in carrying out the **company's** charitable purpose(s).
- 11.3 The **company** must not do anything which causes or might cause it to lose its charitable status or its right to be listed on the Register of Environmental Organisations or any register that replaces that register.

- 11.4 Nothing in this Constitution authorises the **company** to do an act that is prohibited by a law of a State or Territory or gives the **company** a right that the law of a State or a Territory denies to the **company**.

12. Amending the constitution

- 12.1 Subject to clause 12.2, the council members may amend this constitution by passing a **special resolution**.
- 12.2 The council members must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.

Members

13. Membership and register of members

- 13.1 All existing members of **merging organisations** shall become **initial** members and thereafter shall be bound by the rules of the **company**.
- 13.2 There shall be two tiers of membership, ordinary members and council members.
- 13.3 Ordinary members are all persons admitted to membership of the **company** by virtue of
- a) being an **initial** member, or
 - b) both
 - a. submitting an approved application and payment of the prescribed fee, and,
 - b. being a person or an organisation whose purpose or intent does not conflict with the aims and objectives of the **company**.
- 13.4 Ordinary members shall constitute a network for public engagement and communication purposes aimed at broadening the **company's** membership base, sourcing clients, and contributing to community fundraising.
- 13.5 Council members are ordinary members appointed by the directors to fulfil a governance role prescribed by the Constitution including, but not restricted to, voting on the election of directors and constitutional amendments, and:
- a) shall have relevant expertise in areas which contribute to the **company's** ability to deliver a National Strategy, including but not limited to, environmental law, science, policy, community engagement, community leadership, not for profit governance, management and fundraising;
 - b) must demonstrate active support for the company's purposes and values; and
 - c) shall abide by the **company's** Code of Conduct and any other relevant policies.
- 13.6 An ordinary member applying for appointment as a council member may be nominated by another ordinary member or may self-nominate providing the nomination is supported in writing by another ordinary member.
- 13.7 To approve an application for a member to become a council member the directors shall:
- a) consider the maintenance of a diverse membership based on the regions defined by the constitution;
 - b) ensure that no region constitutes more than 50% of the composition of council members;
 - c) consider the relevant expertise of the applicant in relation to the current skills matrix established for council members; and

- d) maintain the council membership level at no less than 50 and no more than 100 members.
- 13.8 The **company** must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
- (a) for each current ordinary member:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices, and
 - iv. date the member was entered on to the register
 - v. their status as a member, either ordinary or council member, and
 - (b) for each person who stopped being a member in the last 7 years:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices, and
 - iv. dates the membership started and ended.
- 13.9 The **company** must give current members access to the register of members.
- 13.10 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

14. How to apply to become a member

A person may apply to become an ordinary member of the **company** (as defined in clause 13.2) by lodging with the secretary:

- (a) In the case of a natural person:
 - i. written notice stating that they want to become a member and support the purpose(s) of the **company**; and
 - ii. the nomination of a financial member;
- (b) in the case of a corporation:
 - i. written consent under seal to be a member of the company; and
 - ii. the nomination of five financial members;
- (c) the application fee and membership fee as determined by the directors from time to time, and
- (d) agreement to comply with the **company's** constitution, including paying the guarantee under clause 7 if required.

15. Directors decide whether to approve membership

- 15.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- 15.2 If the directors approve an application, the secretary must as soon as possible:
- (a) enter the new member on the register of members, and
 - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 16).
- 15.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected but does not have to give reasons.
- 15.4 This clause 15 operates subject to clause 13.3.

- 15.5 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 14(a) to (d). In that case, by applying to be a member, the applicant agrees to those six matters.
- 15.6 Members acknowledge the Constitution comprises a contract between a member and the **company**.

16. When a person becomes a member

Other than **initial members**, an applicant will become a member when they are entered on the register of members.

17. When a person stops being a member

A person immediately stops being a member if they:

- (a) die
- (b) are wound up or otherwise dissolved or deregistered (for an incorporated member)
- (c) resign, by writing to the secretary
- (d) are expelled under clause 19, or
- (e) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

Dispute resolution and disciplinary procedures

18. Dispute resolution

- 18.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a member or director and:
- (a) one or more members
 - (b) one or more directors, or
 - (c) the **company**.
- 18.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 19 until the disciplinary procedure is completed.
- 18.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 18.4 If those involved in the dispute do not resolve it under clause 18.3, they must within 10 days:
- (a) tell the directors about the dispute in writing
 - (b) agree or request that a mediator be appointed, and
 - (c) attempt in good faith to settle the dispute by mediation.
- 18.5 The mediator must:
- (a) be chosen by agreement of those involved, or
 - (b) where those involved do not agree:
 - i. for disputes between members, a person chosen by the directors, or
 - ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **company** has its registered office.
- 18.6 A mediator chosen by the directors under clause 18.5(b)(i):
- (a) may be a member or former member of the **company**
 - (b) must not have a personal interest in the dispute, and

- (c) must not be biased towards or against anyone involved in the dispute.
- 18.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard
 - (b) allow those involved a reasonable chance to review any written statements
 - (c) ensure that those involved are given natural justice, and
 - (d) not make a decision on the dispute.

19. Disciplining members

- 19.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **company** if the directors consider that:
- (a) the member has breached this constitution, or
 - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the **company**.
- 19.2 At least 14 days before the directors' meeting at which a resolution under clause 19.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member
 - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
 - (c) what the member is said to have done or not done
 - (d) the nature of the resolution that has been proposed, and
 - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 19.3 Before the directors pass any resolution under clause 19.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the directors, a written explanation before that directors' meeting, and/or
 - (b) speaking at the meeting.
- 19.4 After considering any explanation under clause 19.3, the directors may:
- (a) take no further action
 - (b) warn the member
 - (c) suspend the member's rights as a member for a period of no more than 12 months
 - (d) expel the member
 - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
 - (f) require the matter to be determined at a **general meeting**.
- 19.5 The directors cannot fine a member.
- 19.6 The secretary must give written notice to the member of the decision under clause 19.4 as soon as possible.
- 19.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 19.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

General meetings of council members

20. General meetings called by directors

- 20.1 The directors may call a **general meeting**.
- 20.2 If council members with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held, the directors must:
- (a) within 21 days of the council members' request, give all council members notice of a **general meeting**, and
 - (b) hold the **general meeting** within 2 months of the council members' request.
- 20.3 The percentage of votes that council members have (in clause 20.2) is to be worked out as at midnight before the council members request the meeting.
- 20.4 The council members who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting
 - (b) sign the request, and
 - (c) give the request to the **company**.
- 20.5 Separate copies of a document setting out the request may be signed by council members if the wording of the request is the same in each copy.

21. **General meetings called by council members**

- 21.1 If the directors do not call the meeting within 21 days of being requested under clause 20.2, 50% or more of the council members who made the request may call and arrange to hold a **general meeting**.
- 21.2 To call and hold a meeting under clause 21.1 the council members must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this Constitution
 - (b) call the meeting using the list of council members on the **company's** member register, which the **company** must provide to the council members making the request at no cost, and
 - (c) hold the **general meeting** within three months after the request was given to the **company**.
- 21.3 The **company** must pay the council members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

22. **Annual general meeting**

- 22.1 A **general meeting**, called the annual **general meeting**, must be held:
- (a) within 18 months after registration of the **company**, and
 - (b) after the first annual **general meeting**, at least once in every calendar year.
- 22.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:
- (a) a review of the **company's** activities
 - (b) a review of the **company's** finances
 - (c) any auditor's report
 - (d) the election of directors, and
 - (e) the appointment and payment of auditors, if any.
- 22.3 Before or at the annual **general meeting**, the directors must give information to the council members on the **company's** activities and finances during the period since the last annual **general meeting**.

22.4 The chairperson of the annual **general meeting** must give council members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

23. Notice of general meetings

- 23.1 Notice of a **general meeting** must be given in any manner permitted by the *Corporations Act* or the *ACNC Act*, to:
- (a) each council member entitled to vote at the meeting
 - (b) each director, and
 - (c) the auditor (if any).
- 23.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 23.3 Subject to clause 23.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual **general meeting**, all the council members entitled to attend and vote at the annual **general meeting** agree beforehand, or
 - (b) for any other **general meeting**, council members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 23.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director
 - (b) appoint a director in order to replace a director who was removed, or
 - (c) remove an auditor.
- 23.5 Notice of a **general meeting** must include:
- (a) 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)
 - (b) the general nature of the meeting's business
 - (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution
 - (d) a statement that council members have the right to appoint proxies and that, if a council member appoints a proxy:
 - i. the proxy does not need to be a council member of the **company**
 - ii. the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
 - iii. the proxy form must be delivered to the **company** at least 48 hours before the meeting.
- 23.6 If a **general meeting** is adjourned (put off) for one month or more, the council members must be given new notice of the resumed meeting.

24. Quorum at general meetings

- 24.1 For a **general meeting** to be held, at least 10 council members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one council member).
- 24.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 24.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and

place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:

- (a) if the date is not specified – the same day in the next week
- (b) if the time is not specified – the same time, and
- (c) if the place is not specified – the same place.

24.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

25. Auditor's right to attend meetings

25.1 The auditor is entitled to attend any **general meeting** and to be heard by the council members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

25.2 The **company** must give the auditor (if any) any communications relating to the **general meeting** that a council member of the **company** is entitled to receive.

26. Representatives of council members

26.1 An incorporated member may appoint as a representative:

- (a) one individual as a council member to represent the member at meetings and to sign circular resolutions under clause 33, and
- (b) the same individual or another individual for the purpose of being appointed or elected as a director.

26.2 The appointment of a representative by a council member must:

- (a) be in writing
- (b) include the name of the representative
- (c) be signed on behalf of the council member, and
- (d) be given to the **company** or, for representation at a meeting, be given to the chairperson before the meeting starts.

26.3 A representative has all the rights of a council member relevant to the purposes of the appointment as a representative.

26.4 The appointment may be standing (ongoing).

27. Using technology to hold meetings

27.1 The **company** may hold a **general meeting** at two or more venues using any technology that gives the council members as a whole a reasonable opportunity to participate, including to hear and be heard.

27.2 Anyone using this technology must declare themselves to be present, and is taken to be present in person at the meeting.

28. Chairperson for general meetings

28.1 The **elected chairperson** is entitled to chair **general meetings**.

28.2 The council members present and entitled to vote at a **general meeting** may choose a director or council member to be the chairperson for that meeting if:

- (a) there is no **elected chairperson**, or
- (b) the **elected chairperson** is not present within 30 minutes after the starting time set for the meeting, or
- (c) the **elected chairperson** is present but says they do not wish to act as chairperson of the meeting.

29. Role of the chairperson

- 29.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give council members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 29.2 The chairperson does not have a casting vote.

30. Adjournment of meetings

- 30.1 If a quorum is present, a **general meeting** must be adjourned if a majority of council members present direct the chairperson to adjourn it.
- 30.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Council Members' resolutions and statements

31. Council Members' resolutions and statements

- 31.1 Council members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the **company** of a resolution they propose to move at a **general meeting** (council members' resolution), and/or
 - (b) a written request to the **company** that the **company** give all of its council members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (council members' statement).
- 31.2 A notice of a council members' resolution must set out the wording of the proposed resolution and be signed by the council members proposing the resolution.
- 31.3 A request to distribute a council members' statement must set out the statement to be distributed and be signed by the council members making the request.
- 31.4 Separate copies of a document setting out the notice or request may be signed by council members if the wording is the same in each copy.
- 31.5 The percentage of votes that council members have (as described in clause 31.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 31.6 If the **company** has been given notice of a council members' resolution under clause 31.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 31.7 This clause does not limit any other right that a council member has to propose a resolution at a **general meeting**.

32. Company must give notice of proposed resolution or distribute statement

- 32.1 If the **company** has been given a notice or request under clause 31.1:
- (a) in time to send the notice of proposed council members' resolution or a copy of the council members' statement to council members with a notice of meeting, it must do so at the **company's** cost, or
 - (b) too late to send the notice of proposed council members' resolution or a copy of the council members' statement to council members with a notice of meeting, then the council members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving council members notice of the proposed council members' resolution or a copy of the

council members' statement. However, at a **general meeting**, council members may pass a resolution that the **company** will pay these expenses.

- 32.2 The **company** does not need to send the notice of proposed council members' resolution or a copy of the council members' statement to council members if:
- (a) it is more than 1 000 words long
 - (b) the directors consider it may be defamatory
 - (c) clause 32.1(b) applies, and the council members who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed council members' resolution or a copy of the council members' statement to council members, or
 - (d) in the case of a proposed council 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 council members.

33. Circular resolutions of council members

- 33.1 Subject to clause 33.3, the directors may put a resolution to council members to pass a resolution without a **general meeting** being held (a circular resolution).
- 33.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to council members, and set out the wording of the resolution.
- 33.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director
 - (b) for passing a **special resolution**, or
 - (c) where the **Corporations Act** or this Constitution requires a meeting to be held.
- 33.4 A circular resolution is passed if 75% of the council members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 33.5 or clause 33.6.
- 33.5 Council members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 33.6 The **company** may send a circular resolution by email to council members and council members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at general meetings

34. How many votes a council member has

Each council member has one vote.

35. Challenge to council member's right to vote

- 35.1 A council member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 35.2 If a challenge is made under clause 35.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

36. How voting is carried out

- 36.1 Voting must be conducted and decided by:
- (a) a show of hands
 - (b) a secret ballot or
 - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 36.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 36.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 36.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

37. When and how a secret ballot must be held

- 37.1 A secret ballot may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five council **members present**
 - (b) **council members present** with at least 5% of the votes that may be passed on the resolution on the secret ballot (worked out as at the midnight before the secret ballot is demanded), or
 - (c) the chairperson.
- 37.2 A secret ballot must be taken when and how the chairperson directs, unless clause 37.3 applies.
- 37.3 A secret ballot must be held immediately if it is demanded under clause 37.1:
- (a) for the election of a chairperson under clause 28.2, or
 - (b) to decide whether to adjourn the meeting.
- 37.4 A demand for a secret ballot may be withdrawn.

38. Appointment of proxy

- 38.1 A council member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 38.2 A proxy does not need to be a council member.
- 38.3 A proxy appointed to attend and vote for a council member has the same rights as the council member to:
- (a) speak at the meeting
 - (b) vote in a secret ballot (but only to the extent allowed by the appointment), and
 - (c) join in to demand a secret ballot under clause 37.1.
- 38.4 An appointment of proxy (proxy form) must be signed by the council member appointing the proxy and must contain:
- (a) the council 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, and
 - (d) the meeting(s) at which the appointment may be used.
- 38.5 A proxy appointment may be standing (ongoing).
- 38.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 23.5(d) or at the **company's** registered address at least 48 hours before a meeting.

- 38.7 A proxy does not have the authority to speak and vote for a council member at a meeting while the council member is at the meeting.
- 38.8 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing council member:
- (a) dies
 - (b) is mentally incapacitated
 - (c) revokes the proxy's appointment, or
 - (d) revokes the authority of a representative or agent who appointed the proxy.
- 38.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

39. Voting by proxy

- 39.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a council member appointed as a proxy from voting as a council member on a show of hands).
- 39.2 When a secret ballot is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
 - (b) if the way they must vote is specified on the proxy form, must vote that way, and
 - (c) if the proxy is also a council member or holds more than one proxy, may cast the votes held in different ways.

Directors

40. Number of directors

The **company** must have at least five and no more than twelve directors.

41. Election and appointment of directors

- 41.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the Schedule to this Constitution.
- 41.2 Apart from the initial directors and directors appointed under clause 41.6, a council member may either be elected a director by a resolution passed in a **general meeting** or appointed by the directors pursuant to clause 41.3.
- 41.3 Apart from the initial directors whose appointment takes place by virtue of this Constitution coming into force, directors shall otherwise be appointed as follows:
- (a) up to 9 directors elected by the council members;
 - (b) up to 3 additional directors may be appointed by the directors following the election of directors at an annual general meeting pursuant to clause 41.6; and
 - (c) filled as a casual vacancy pursuant to clause 41.6,
- so that the total number of directors at any time does not exceed 12.
- 41.4 Each of the elected directors must be appointed by a separate resolution, unless:
- (a) the council members present have first passed a resolution that the appointments may be voted on together, and
 - (b) no votes were cast against that resolution.
- 41.5 A person is eligible for election as a director of the **company** if they:

- (a) give the **company** their signed consent to act as a director of the **company**,
 - (b) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**,
 - (c) are a council member of the **company**, or a representative of a council member of the **company** appointed under clause 26.1, and
 - (d) are nominated by two council members or representatives of council members entitled to vote (unless the person was previously elected as a director at a **general meeting** and has been a director since that meeting).
- 41.6 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (a) gives the **company** their signed consent to act as a director of the **company**;
 - (b) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**;
 - (c) is a council member of the **company**, or an appointed representative of an organisation which is a member of the **company** under clause 26.1, and
 - (d) is a person, deemed appropriate by the directors to fill a gap in the current skills matrix, necessary to the good management of the **company**,
- and, where there are not at least two elected or remaining directors who meet the residential requirement that person must also satisfy the residential requirement.
- 41.7 If a director vacating their office is the only director who satisfies the residential requirement that director shall be replaced by a suitably qualified person who does.
- 41.8 An additional director appointed under clause 41.6 will serve the period specified in the resolution of appointment. However, the specified period must not exceed 3 consecutive years and such person may be appointed for a further consecutive term only once.
- 41.9 Where a director is appointed to fill a casual vacancy that director shall serve the balance of the current term and if the period served in that capacity is more than 18 months it shall be deemed a full term in relation to the 3-year cycle but if less than 18 months that director's first term in relation to the 3-year cycle begins as at the date of the following AGM.
- 41.10 If the number of directors is more than three but less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to five for a quorum or for calling a general meeting, but for no other purpose.
- 41.11 If at any time the composition of directors does not meet the requirements of clause 41.10 decisions of the directors remain valid.
- 42. Nomination of candidates for election as directors**
- 42.1 The directors must take all reasonable steps to ensure the nominations for ballot include those:
- (a) who collectively meet the qualifications for diversity adopted in the **company's** skills matrix and diversity policy in force from time to time, and/or
 - (b) meets the residential requirement.
- 42.2 The company shall call for nomination of candidates for election as directors no less than 2 calendar months before an AGM.

42.3 Not less than 35 days before the AGM, a nominating candidate must lodge with the company secretary a nomination in the approved form together with biographical notes.

43. **Process of ballot**

43.1 The ballot process shall be as follows:

- a) a ballot paper listing the candidates in alphabetical order together with the candidate's residential address and the proposer's name, together with biographical notes and a copy of the current skills matrix developed by the directors, shall be forwarded to all council members with the notice of meeting not less than 21 days prior to the AGM;
- b) votes may be cast at the meeting, or by postal ballot or by electronic means;
- c) a person who has cast a postal or electronic vote must not vote again at the meeting, whether as a show of hands or by secret ballot;
- d) ballots cast by electronic means, using any process notified by the directors in the notice of the meeting, must be received by the **company** secretary no less than 24 hours prior to the date and time of the AGM;
- e) where the number of candidates capable of being elected is equal to or less than the number required, the candidates capable of being elected will be automatically elected. Where more than the required number have been nominated the election shall proceed by secret preferential ballot;
- f) where the number of candidates is less than the required number the unfilled positions shall be deemed casual vacancies;
- g) a returning officer shall be appointed by the **company** who shall be responsible for the integrity of the ballot;
- h) electronic votes must be forwarded to a dedicated email address and kept confidential to the returning officer until postal ballots are opened by the returning officer;
- i) the ballot for postal and electronic votes will close at 2.00 pm on the day of the AGM and shall remain confidential until the conclusion of voting at the AGM.
- j) votes cast at the AGM will then be included in the ballot, and,
- k) the result shall be declared by the Returning Officer at the AGM.

43.2 Following conclusion of this ballot process, should the board not include any directors who satisfy the residential requirement, or only one, the directors must make every endeavour to appoint suitably qualified persons or person who satisfies the Residential Requirement, pursuant to clause 41.6.

44. **Determination of ballot**

The result of the ballot shall be determined in the following manner to ensure that there will always be at least two elected directors who meet the residential requirement.

- a) For a vote to be formal the ballot paper must indicate clearly the voter's preference for all candidates.

- b) The returning officer will conduct a preferential count to determine the highest scoring candidates equal in number to the number of vacancies to be filled. This count will be known as the first count.
- c) The returning officer will then check the first count to determine whether the election of those candidates includes at least two who each satisfy the Residential Requirement.
- d) If the result includes at least two directors each of whom satisfies the Residential Requirement then the successful candidates will be declared elected.
- e) If the election of these candidates would result in a board without two directors who each satisfy the Residential Requirement, then the candidate with the lowest number of votes on the first count will be replaced by the highest scoring candidate who does satisfy the Residential Requirement until there are two such directors.

45. Election of chairperson

The directors must elect a director as the **company's** elected **chairperson**.

46. Term of office

- 46.1 At each annual **general meeting**;
 - (a) at least one-third of the elected directors must retire.
 - (b) Directors filling a casual vacancy retire pursuant to the provisions of clause 41.9,
 - (c) A director shall retire according to their term of appointment under 41.8.
- 46.2 The directors who must retire at each annual **general meeting** under clause 46.1 will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.
- 46.3 Other than a director appointed under clause 41.9, a director's term of office starts at the end of the annual **general meeting** at which they are elected and ends at the end of the annual **general meeting** at which they retire.
- 46.4 Each elected director must retire at least once every three years.
- 46.5 A director who retires under clause 46.1(a) may nominate for election or re-election, subject to clause 46.6.
- 46.6 A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a **special resolution**

47. When a director stops being a director

A director stops being a director if they:

- (a) give written notice of resignation as a director to the **company**
- (b) die
- (c) are removed as a director by a resolution of the council members
- (d) are a representative of a council member, and that council member stops being a council member
- (e) are a representative of a council member, and the council member notifies the **company** that the representative is no longer a representative

- (f) are absent for 3 consecutive directors' meetings without approval from the directors, or
- (g) become ineligible to be a director of the **company** under the **Corporations Act**, the **ACNC Act** or other legislation.

Powers of directors

48. Powers of directors

- 48.1 The directors are responsible for managing and directing the activities of the **company** to achieve the purposes set out in clause 9.
- 48.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this Constitution, may only be used by council members.
- 48.3 The directors must decide on the responsible financial management of the **company** including:
 - (a) any suitable written delegations of power under clause 49, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 48.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a council members' resolution at a **general meeting**.

49. Delegation of directors' powers

- 49.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 49.2 The delegation must be recorded in the **company's** minute book.

50. Payments to directors

- 50.1 The **company** must not pay fees to a director for acting as a director.
- 50.2 The **company** may:
 - (a) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done, or
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**.
- 50.3 Any payment made under clause 50.2 must be approved by the directors.
- 50.4 The **company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this Constitution.

51. Execution of documents

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

- (a) two directors of the **company**, or
- (b) a director and the secretary.

Duties of directors

52. Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**
- (b) to act in good faith in the best interests of the **company** and to further the charitable purpose(s) of the **company** set out in clause 9
- (c) not to misuse their position as a director
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 53.
- (f) to ensure that the financial affairs of the **company** are managed responsibly, and
- (g) not to allow the **company** to operate while it is insolvent.

53. Conflicts of interest

- 53.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
- (a) to the other directors, or
 - (b) if all of the directors have the same conflict of interest, to the council members at the next **general meeting**, or at an earlier time if reasonable to do so.
- 53.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 53.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 53.4:
- (a) be present at the meeting while the matter is being discussed, or
 - (b) vote on the matter.
- 53.4 A director may still be present and vote if:
- (a) their interest arises because they are a council member of the **company**, and the other council members have the same interest
 - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company** (see clause 72)
 - (c) their interest relates to a payment by the **company** under clause 68 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
 - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
 - (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **company**, and

- (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

54. When the directors meet

The directors may decide how often, where and when they meet.

55. Calling directors' meetings

A director may call a directors' meeting by giving reasonable written notice to all of the other directors delivered by hand, post or electronically.

56. Chairperson for directors' meetings

- 56.1 The **elected chairperson** is entitled to chair directors' meetings.
- 56.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the **elected chairperson** is:
 - (a) not present within 30 minutes after the starting time set for the meeting, or
 - (b) present but does not want to act as chairperson of the meeting.

57. Quorum at directors' meetings

- 57.1 Unless the directors determine otherwise, the quorum for a directors' meeting is 5.
- 57.2 A quorum must be present for the whole directors' meeting.

58. Using technology to hold directors' meetings

- 58.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 58.2 The directors' agreement may be a standing (ongoing) one.
- 58.3 A director may only withdraw their consent within a reasonable period before the meeting.

59. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

60. Circular resolutions of directors

- 60.1 The directors may pass a circular resolution without a directors' meeting being held.
- 60.2 A circular resolution is passed if more than 50% of the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 60.3 or clause 60.4.
- 60.3 Each director may sign:
 - (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 60.4 The **company** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

- 60.5 A circular resolution is passed when the last director constituting more than 50% of all directors entitled to vote on the resolution signs or otherwise agrees to the resolution in the manner set out in clause 60.3 or clause 60.4.

Secretary

61. Appointment and role of secretary

- 61.1 The **company** must have at least one secretary, who may also be a director.
- 61.2 A secretary must be appointed by the directors (after giving the **company** their signed consent to act as secretary of the **company**) and may be removed by the directors.
- 61.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 61.4 The role of the secretary includes:
- (a) maintaining a register of the **company's** members, and
 - (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and circular resolutions.

Minutes and records

62. Minutes and records

- 62.1 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**
 - (b) minutes of circular resolutions of council members
 - (c) a copy of a notice of each **general meeting**, and
 - (d) a copy of a council members' statement distributed to council members under clause 32.
- 62.2 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of directors.
- 62.3 To allow members to inspect the **company's** records:
- (a) the **company** must give a member access to the records set out in clause 62.1, and
 - (b) the directors may authorise a member to inspect other records of the **company**, including records referred to in clause 62.2 and clause 63.1.
- 62.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
 - (b) the chairperson of the next meeting.
- 62.5 The directors must ensure that minutes of the passing of a circular resolution (of council members or directors) are signed by a director within a reasonable time after the resolution is passed.

63. Financial and related records

- 63.1 The **company** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and

- (b) enable true and fair financial statements to be prepared and to be audited.
- 63.2 The **company** must also keep written records that correctly record its operations.
- 63.3 The **company** must retain its records for at least 7 years.
- 63.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.

By-laws

64. By-laws

- 64.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 64.2 Council Members and directors must comply with by-laws as if they were part of this constitution.

Notice

65. What is notice

- 65.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 66 to 68, unless specified otherwise.
- 65.2 Clauses 63 to 65 do not apply to a notice of proxy under clause 38.6.

66. Notice to the company

Written notice or any communication under this constitution may be given to the **company**, the directors or the secretary by:

- (a) delivering it to the **company's** registered office
- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided
- (c) sending it to an email address or other electronic address notified by the **company** to the council members as the **company's** email address or other electronic address.

67. Notice to council members

- 67.1 Written notice or any communication under this constitution may be given to a council member:
 - (a) in person
 - (b) by posting it to, or leaving it at the address of the council member in the register of members or an alternative address (if any) nominated by the council member for service of notices
 - (c) sending it to the email or other electronic address nominated by the council member as an alternative address for service of notices (if any), or
 - (d) if agreed to by the council member, by notifying the council member at an email or other electronic address nominated by the council member, that the notice is available at a specified place or address (including an electronic address).
- 67.2 If the **company** does not have an address for the council member, the **company** is not required to give notice in person.

68. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- (c) sent by email or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 67.1(d) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

69. Company's financial year

The **company's** financial year is from 1 July to 30 June.

Indemnity, insurance and access

70. Indemnity

- 70.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**.
- 70.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 70.3 In this clause, 'to the relevant extent' means:
 - (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so, and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 70.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

71. Insurance

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

72. Directors' access to documents

- 72.1 A director has a right of access to the financial records of the **company** at all reasonable times.
- 72.2 If the directors agree, the **company** must give a director or former director access to:
 - (a) certain documents, including documents provided for or available to the directors,
 - (b) and any other documents referred to in those documents.

Regions

73.1 To ensure appropriate legal services, for administrative purposes, and to promote community engagement the **company** shall establish the following **Regions** that reflect the area of operation of each **merging organisation**, namely:

- (a) Northern Territory
- (b) Queensland, north of Sarina
- (c) Queensland, south of Sarina to the New South Wales border
- (d) New South Wales
- (e) Tasmania
- (f) Australian Capital Territory
- (g) South Australia, and
- (h) Western Australia,
and Victoria, if and when an office is opened within that jurisdiction.

73.2 Members of each **Region** shall comprise such members of the **company** as reside within the geographical area of the **Region**.

73.3 The company may create such by-laws as may be necessary to govern those functions as will ensure the delivery of appropriate legal services, for administrative purposes, and to promote community engagement within each **Region**.

73.4 The **company** shall create by-laws for the specific purpose of conducting regional activities.

Environmental Defence Gift Fund

(f) Rules governing the Fund

- (a) The objective of the **Fund** is to support the **company's** environmental purposes.
- (b) Members of the public must be invited to make gifts of money or property to the **Fund** for the environmental purposes of the **company**
- (c) Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the **Fund**
- (d) A separate bank account must be kept to deposit money donated to the **Fund**, including interest accruing thereon, and gifts to it are to be kept separate from other funds of the **company**
- (e) Receipts are to be issued in the name of the **Fund** and proper accounting records and procedures are to be kept and used for the **Fund**.
- (f) The **Fund** will be operated on a not-for-profit basis.
- (g) A committee of management of no fewer than three persons will administer the **Fund**. The committee will be appointed by the directors. A majority of the council members of the committee are required to be 'responsible persons' as defined by the Guidelines to the Register of Environmental Organisations.

(g) Additional provisions in relation to the Fund

- (a) The **company** must inform the Commonwealth Department responsible for the environment as soon as possible if it changes its name or the name of the **Fund**; or there is any change to the council membership of the management committee of the **Fund**; or there has been any departure from the model rules for public funds located in the Guidelines to the Register of Environmental Organisations.
- (b) The **company** agrees to comply with any rules that the Treasurer and the Minister with responsibility for the environment may make to ensure that gifts made to the **Fund** are only used for its primary purpose.
- (c) The income and property of the **Fund** shall be used and applied solely in promotion of the **company's** objects and no portion shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to members, directors, or trustees of the **company**.
- (d) Any allocation of funds or property to other persons or organisations will be made in accordance with the established purposes of the **company** and not be influenced by the preference of the donor.
- (e) Statistical information requested by the Department on donations to the **Fund** will be provided within four months of the end of the financial year.
- (f) An audited financial statement for the **company** and the **Fund** will be supplied with the annual statistical return. The statement will provide information on the expenditure of public fund monies and the management of public fund assets.
- (h) If the **Fund** is wound up or the **company** ceases to be listed on the Register of Environmental Organisations or any register that replaces that register any surplus money or assets are to be transferred to another charitable fund with similar objectives that is on such register.

Winding up

(i) Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **company**, unless that member or former member is a charity described in clause j.1.

(j) Distribution of surplus assets

- j.1 Subject to the **Corporations Act**, the **ACNC Act**, and any court order, any **surplus assets** that remain after the **company** is wound up must be distributed to one or more charities:
 - (a) with charitable purpose(s) similar to, or inclusive of, the purposes in clause 9, and
 - (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **company**.
- j.2 The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution** of council members at or before the time of winding up. If the council members do not make this decision, the **company** may apply to the Supreme Court to make this decision.

Schedule 1: Initial Directors

1. Bronwyn Darlington
2. Catherine Hathaway
3. Jan McDonald
4. Jeff Smith
5. Joe Morrison
6. Kate Galloway
7. Pepe Clarke
8. Susanne Behrendt