

ASSOCIATION NO. A7772

Proposed Constitution for consideration
at meeting on 14 October 2009

**CONSTITUTION
OF
NATURE FOUNDATION SA INCORPORATED**

ADOPTED ON _____ 20 _____

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CONSTITUTION OF NATURE FOUNDATION SA INCORPORATED

I N D E X

1.	NAME OF ASSOCIATION	1
1.1.	Name.....	1
2.	INTERPRETATION AND DEFINITIONS	1
2.1.	Definitions.....	1
3.	PURPOSES OR OBJECTS OF FOUNDATION.....	1
3.1.	The purposes or objects of the Foundation	1
4.	POWERS OF FOUNDATION.....	2
4.1.	The powers of the Foundation.....	2
5.	PROPERTY OF FOUNDATION	4
5.1.	Property	4
6.	MEMBERSHIP AND AWARDS	5
6.1.	Classes of membership	5
6.2.	Application for membership	5
6.3.	Council to determine application.....	5
6.4.	Resignation	5
6.5.	Family membership	5
6.6.	Promotional membership	5
6.7.	Life membership	6
6.8.	Corporate or partnership membership.....	6
6.9.	Fellow	6
6.10.	Honorary membership.....	6
6.11.	Awards and acknowledgements.....	6
6.12.	Restraint on accepting members	6
7.	DISCIPLINE.....	6
7.1.	Breach of obligation by member.....	6
7.2.	Procedure	7
7.3.	Power to impose penalty	7
7.4.	Communication of decision.....	7
7.5.	Appeal	7
7.6.	Determination of appeal	7
8.	SUBSCRIPTIONS.....	7
8.1.	Subscriptions	7
8.2.	Council to determine.....	7
8.3.	Failure to pay subscription.....	8
8.4.	Non-financial members	8
8.5.	Reduced subscription	8
9.	REGISTER OF MEMBERS	8
9.1.	Register of members	8
9.2.	Inspection and copying.....	8
10.	GENERAL MEETINGS.....	8
10.1.	Annual General Meeting	8
10.2.	Special General Meeting	9
10.3.	Requisition of Special General Meetings.....	9
10.4.	Notices (including e-service).....	9
10.5.	Business	10

10.6.	Quorum	10
10.7.	Chair	10
10.8.	Adjournment	10
10.9.	Voting.....	11
10.10.	Poll	11
10.11.	Manner of determining resolution	11
10.12.	Proxies	12
11.	PATRONS	12
11.1.	Appointment of patrons	12
12.	COUNCIL	12
12.1.	Powers and duties of Council.....	12
12.2.	Composition of Council	12
12.3.	Term of office for Council Members and Office Holders.....	13
12.4.	Election of Council members	13
12.5.	Casual vacancies, ill-health and additional Council members	13
12.6.	Disqualification of Council members	13
12.7.	Council member's interest	14
12.8.	Conflict of interest.....	14
12.9.	Disclosure of interests	14
12.10.	General disclosure	14
12.11.	Recording disclosures	15
13.	COUNCIL MEETINGS	15
13.1.	Meetings.....	15
13.2.	Quorum for Council meetings	15
13.3.	Presiding member	15
13.4.	Voting.....	15
13.5.	Written resolution and electronic meetings and voting	16
13.6.	Validity of decisions	16
13.7.	Adjournment	16
14.	FINANCE	16
14.1.	Financial year	16
14.2.	Maintain accounting records	16
14.3.	Accounts and reports at annual general meeting.....	16
14.4.	Returns lodged at Office of Consumer & Business Affairs	16
15.	AUDITOR	17
15.1.	Appointment of auditor.....	17
16.	MINUTES	17
16.1.	Minutes to be maintained	17
17.	FUNDS	17
17.1.	Funds to be collected	17
17.2.	Cheques etc signatories	17
18.	COMMON SEAL	18
18.1.	Common seal.....	18
19.	CUSTODY OF BOOKS, RECORDS	18
19.1.	Custody and inspection of books	18
20.	APPOINTMENT OF EXECUTIVE COMMITTEE AND OTHER COMMITTEES	18
20.1.	Executive.....	18
20.2.	Appointment of other committees	18
20.3.	Chair, quorum and terms of reference	18
20.4.	Procedure for committees	19

- 21. DELEGATIONS19
 - 21.1. Delegation of powers19
 - 21.2. Delegated function exercised in accordance with the terms19
 - 21.3. Procedure of delegated entity19
 - 21.4. Delegation may be conditional19
 - 21.5. Revocation of delegation.....19
- 22. PUBLIC OFFICER19
 - 22.1. Public officer19
 - 22.2. Default appointment19
- 23. INDEMNITY19
 - 23.1. Indemnity to Council members19
- 24. ALTERATION OF CONSTITUTION..... 20
 - 24.1. Procedure and effect 20
- 25. WINDING-UP 20
 - 25.1. Winding-up by resolution 20
- 26. TRANSITIONAL PROVISIONS 20

1. **NAME OF ASSOCIATION**

1.1. **Name**

The name of the incorporated association is “**Nature Foundation SA Incorporated**”.

2. **INTERPRETATION AND DEFINITIONS**

2.1. **Definitions**

In this Constitution, unless the contrary intention appears:

“**ADI**” means an authorised deposit-taking institution within the meaning of the *Banking Act (Cwth)*;

“**Council**” means the council of management of the Foundation;

“**Foundation**” means “Nature Foundation SA Incorporated”;

“**general meeting**” means a general meeting of members of the Foundation convened in accordance with this Constitution;

“**member**” means a member of the Foundation and where the context shall so permit will include each person who is a member within a family membership or a representative of a corporate member;

“**Office Holder**” means any of the President, Vice President, Secretary or Treasurer of the Council;

“**the Act**” means the *Associations Incorporation Act 1985*;

“**special resolution**” means a special resolution defined in the Act, namely a resolution passed at a duly convened meeting of the members of the Foundation:

- (a) of which at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been given to all members of the Foundation; and
- (b) it is passed at a meeting referred to in this paragraph by a majority of not less than three quarters of such members of the Foundation as, being entitled to do so, vote in person, or where proxies are allowed, by proxy, at that meeting;

“**month**” shall mean a calendar month;

“**water right**” means any licence, authorisation or other right to hold, take or use water from the River Murray or any other prescribed water course, lake, well or surface water from any prescribed area which is prescribed or proclaimed under the *Natural Resources Management Act 2004* or similar legislation;

“**wildlife**” means all native plants and animals indigenous to Australia existing apart from cultivation or domestication.

3. **PURPOSES OR OBJECTS OF FOUNDATION**

3.1. **The purposes or objects of the Foundation**

The purposes or objects of the Foundation are:

- (a) to conserve, protect and restore wildlife and sites of cultural significance in South Australia;

- (b) to conserve, protect and restore the habitat of wildlife in South Australia including terrestrial and aquatic habitats;
- (c) to assist in the implementation of the objectives of the *River Murray Act 2003* collectively known as “Objectives for a Healthy River Murray”;
- (d) to operate as a charity and to raise funds and obtain donations or bequests of real and personal property including water rights for the benefit of the objects and purposes of the Foundation;
- (e) to foster and promote research into matters pertaining to the conservation, protection and restoration of wildlife and wildlife habitat, and to the Objectives for a Healthy River Murray;
- (f) to provide information and education to members and to the public into matters relating to the conservation, protection and restoration of wildlife and wildlife habitat in South Australia and the Objectives for a Healthy River Murray;
- (g) to enter into trust or contractual arrangements for the purpose of obtaining, holding, administering and disposing of funds or other assets, both real and personal, which will be used for the benefit of other objects or purposes of the Foundation;
- (h) to enter into contractual arrangements for the provision of land, goods or services for the purpose of enabling parties to fulfil obligations in relation to environmental benefits;
- (i) to sponsor awards or prizes in any competition or other activity which is to promote the conservation, protection or restoration of wildlife or wildlife habitat or the natural environment in South Australia;
- (j) to support eradication programmes for the removal of feral fauna and flora or other threats to wildlife or wildlife habitat in South Australia;
- (k) to promote or to oppose in a non-party political manner legislative or other measures affecting the interests or objects of the Foundation;
- (l) in furtherance of the mutual interest of the members of the Foundation to take such action as the Foundation may from time to time consider proper.

4. **POWERS OF FOUNDATION**

4.1. **The powers of the Foundation**

For the purposes of carrying out its purposes or objects, the Foundation may:

- (a) acquire, hold, deal with and dispose of any real or personal property;
- (b) accept any gift of any property or money whether the subject of a trust or not;
- (c) administer any property or fund on trust;
- (d) construct, maintain or alter any buildings or works on property owned or occupied by the Foundation or otherwise;
- (e) sell, grant a lease or licence, mortgage, dispose of, give or otherwise deal with all or any part of any property of the Foundation;

- (f) enter into any encumbrance, management agreement or heritage agreement in relation to all or any part of any property of the Foundation and carry out its obligations under that encumbrance or agreement;
- (g) take on lease or licence or hire or otherwise, acquire a right to occupy or possess any real or personal property for the Foundation;
- (h) exchange any real or personal property of the Foundation;
- (i) open and operate any ADI account;
- (j) invest its monies:
 - (i) in any security in which trust monies, may by Act of Parliament, be invested;
or
 - (ii) in any other manner authorised by the Constitution of the Foundation;
- (k) borrow any money upon such terms and conditions including giving security over any property of the Foundation, as the Foundation thinks fit;
- (l) give such security for the discharge of liabilities incurred by the Foundation and as the Foundation thinks fit;
- (m) enter into any contract the Foundation considers necessary or desirable;
- (n) appoint agents to transact any business of the Foundation on its behalf;
- (o) engage or dismiss any staff or worker for the Foundation upon such terms as the Foundation thinks fit;
- (p) retain or employ skilled professional or technical advisers or other persons the Foundation desires to employ in connection with the object of the Foundation and to pay such fees or remuneration as may be thought expedient;
- (q) carry on any business not inconsistent with the purposes and objects of the Foundation for the benefit of the Foundation and take or defend any legal proceedings;
- (r) enter into contracts or arrangements with Ministers, Departments or units of the Commonwealth or State Governments to provide land, goods or funds or other assistance or services which will be of benefit to the purposes or objects of the Foundation;
- (s) seek or receive membership fees, donations, gifts and property of any kind;
- (t) prepare, edit, print or publish any periodicals, reports or other documents and film, televise or otherwise record, issue, acquire or circulate books, papers, periodicals, gazettes, circulars and other educational or literary undertakings or films or records in whatsoever media treating on or bearing upon any research undertaken or made known in connection with the activities of the Foundation;
- (u) provide education and disseminate literature relating to the Foundation and its purposes and found, aid, maintain and endow fellowships, scholarships and bursaries for the remuneration and support of under-graduates or graduates or others in research work or persons engaged in studying principles involved in any of the purposes and objects of the Foundation whether on its own account or as administrator of a trust fund for those purposes;

- (v) impose any charges or fees appropriate for services and publications provided by the Foundation;
- (w) make and enforce by-laws, regulations or policies for the control and management of the Foundation;
- (x) affiliate with or join with any entity or other persons whose purposes or objects are the same as or similar to the purposes and objects of the Foundation or where such affiliation or joinder would further any purpose of the Foundation;
- (y) contribute to any body or support any body with purposes or objects consistent with the purposes or objects of the Foundation;
- (z) arrange and provide recreation and other activities for members or persons associated with members of the Foundation whether for fee or otherwise;
- (aa) make awards or honorary membership or give other acknowledgement to persons or organisations who have provided exceptional service or benefits or assistance to the Foundation itself or to causes or organisations which would assist the purposes or objects of the Foundation;
- (bb) do all such other acts or things to further the purposes or objects of the Foundation as the Foundation members in general meeting or the Council thinks fit as appear to be necessary, incidental or conducive to the attainment of the purposes or objects of the Foundation; and
- (cc) take such steps beyond the borders of South Australia as may be necessary to promote the purposes or objects of the Foundation.

5. **PROPERTY OF FOUNDATION**

5.1. **Property**

- 5.1.1. All income and property of the Foundation may only be applied for the purposes of the Foundation.
- 5.1.2. No income or property of the Foundation may be paid or transferred directly or indirectly to the members or relatives of members but members or relatives of members may purchase or acquire land, goods or services from the Foundation or a trust of which the Foundation is trustee or administrator for market value on normal commercial terms.
- 5.1.3. However, this does not restrict the payment in good faith of:
 - (a) reasonable remuneration to any officer or member of the Foundation for services actually rendered;
 - (b) reasonable payment for goods or services supplied to the Foundation by a member; or
 - (c) reasonable rental for property let or hired to the Foundation by a member; or
 - (d) any payment incidental to the Foundation's activities provided it is consistent with the Foundation's purposes.

6. MEMBERSHIP AND AWARDS

6.1. Classes of membership

The Foundation shall have the following classes of membership:

- (a) individual membership;
- (b) family membership;
- (c) promotional membership;
- (d) corporate or partnership membership;
- (e) life membership;
- (f) Fellows of the Foundation;
- (g) Honorary membership.

In addition to the classes set out in this Constitution, the Council may create other classes of membership and may set, amend, change or delete criteria for membership in respect of any class created by the Council and without derogating from the classes or criteria specified for each class in this Constitution, the Council may set, amend, change or delete other criteria for membership in respect of any class specified in this Constitution.

6.2. Application for membership

Any person who supports the objects of the Foundation and agrees to be bound by its Rules may apply for membership to the Foundation by completing and signing a form of application issued by the Foundation and except in the case of a promotional membership, tendering the amount of the subscription for that class of membership.

6.3. Council to determine application

The Council may approve any application for membership or may, without giving reason, reject any application for membership. If the application for membership is rejected, the subscription tendered shall be refunded.

6.4. Resignation

A member may resign at any time by notice in writing to the Secretary, but no subscription or membership fee shall be refundable upon resignation.

6.5. Family membership

Persons who wish to be in the class of family membership shall be persons who reside together in a genuine domestic relationship and in the event of more than one person being within a family membership, then each adult member of the family membership shall be treated as a separate member of the Foundation for voting purposes.

6.6. Promotional membership

A person who applies for promotional membership pursuant to any proposal offering promotional membership shall not be required to pay any subscription for the period designated in the proposal and shall remain a member during that period and upon the expiration of that period, such membership shall lapse. A person holding promotional membership shall not be entitled to vote at any meeting of the Foundation or be a member of Council. A person holding promotional membership may apply at any time to become a member in another class of membership and must tender the appropriate subscription.

6.7. **Life membership**

A member may become a life member on payment of an amount equal to 15 times the then current annual subscription for an individual member. A life member has all the privileges of membership but is not required to pay any further annual subscriptions.

6.8. **Corporate or partnership membership**

A corporation or a partnership may be a member of the Foundation, but the corporation or partnership must nominate a natural person to be its representative from time to time and such nominee is treated as if a member in his or her own right for voting and Council appointment purposes.

6.9. **Fellow**

A person may be appointed as a Fellow of the Foundation if the person has, in the opinion of the Council, given outstanding service to the Foundation over a long period of time or made a significant contribution to the Foundation. Fellows of the Foundation are to be elected at the annual general meeting. A Fellow of the Foundation has all the privileges of membership and is not required to pay any annual subscription.

6.10. **Honorary membership**

The Council may grant honorary membership for a period specified by the Council to a person who or entity which, in the opinion of the Council, has made a significant contribution to the work of the Foundation or to the objects or purposes of the Foundation.

6.11. **Awards and acknowledgements**

6.11.1. The Council may make an award or acknowledgement to a person who or entity which, in the opinion of the Council, has made a significant contribution to the work of the Foundation or to the objects or purposes of the Foundation. An award or acknowledgement may be made on such terms specified by the Council, which may but need not include membership of the Foundation.

6.11.2. An award or acknowledgement may be withdrawn by the Council if in the Council's opinion the recipient has acted in a manner inconsistent with or prejudicial to the interests of the Foundation or that may have brought, or bring, the Foundation into disrepute.

6.12. **Restraint on accepting members**

No application for membership will be considered or approved by the Council between the date on which a notice of general meeting is given and the conclusion of the meeting.

7. **DISCIPLINE**

7.1. **Breach of obligation by member**

7.1.1. Where the Council is advised or considers that a member has allegedly:

- (a) breached, failed, refused or neglected to comply with any provision of the Constitution or any resolution or determination of the Council;
- (b) acted in a manner unbecoming of a member or prejudicial to the interests of the Foundation; or
- (c) brought the Foundation into disrepute,

the Council may determine to bring disciplinary proceedings against the member.

7.2. Procedure

7.2.1. The Council must give notice in writing to the member of the allegations and give the member a reasonable opportunity to make submissions, which may be in writing or oral or both, to the Council in relation to the allegations or any penalty which may be imposed before making any determination on the allegations or any penalty.

7.3. Power to impose penalty

7.3.1. If the Council determines that the allegations are correct the Council may:

- (a) reprimand a member;
- (b) suspend the membership of a member; or
- (c) cancel the membership of a member.

7.4. Communication of decision

7.4.1. The determination of the Council shall be communicated to the member and in the event of determination to suspend or cancel the membership the member shall be suspended or cease to be a member, subject to any appeal, 14 days after the Council has communicated its determination to the member.

7.5. Appeal

7.5.1. A member who is disciplined by the Council is entitled to appeal to the Foundation in general meeting against the expulsion. The intention to appeal shall be communicated in writing to the Secretary of the Foundation within 14 days after the determination of the Council has been communicated to the member.

7.6. Determination of appeal

7.6.1. In the event of an appeal against expulsion, the appellant's membership of the Foundation shall not be suspended or terminated until the determination of the Council to suspend or expel the member is upheld by the members of the Foundation in general meeting after the appellant has made submissions, either orally or in writing to the members of the Foundation and in such event the membership will be suspended or terminated at the date of the general meeting at which the determination of the Council is upheld.

8. SUBSCRIPTIONS

8.1. Subscriptions

The subscription fees shall be payable annually on such date as the Council may determine.

8.2. Council to determine

The annual subscription fees for each class of membership shall be such sum, if any, as the Council may from time to time determine. If, prior to the date upon which the annual subscription fee shall be payable, Council does not determine any altered fee in respect of any class of membership, then the annual subscription fee for each class of membership shall remain as last determined by the Council.

8.3. **Failure to pay subscription**

Any member whose subscription is outstanding for more than three months after the date for payment shall cease to be a member of the Foundation provided that the Council may reinstate such a person's membership on such terms as the Council thinks fit.

8.4. **Non-financial members**

Any member whose subscription is outstanding at the date of any general meeting held by the Foundation shall not be entitled to vote at that general meeting, provided that the Council may permit in its absolute discretion, and following payment of all arrears of the member's subscription, that the member may vote.

8.5. **Reduced subscription**

Any person who becomes a member part-way through a year in respect of which subscriptions are determined may pay a proportion of the subscription for membership for that year, which proportion may be determined by Council by reference to dates from time to time.

9. **REGISTER OF MEMBERS**

9.1. **Register of members**

The Secretary must keep and maintain a Register of Members of the Foundation which contains:

- (a) the name and address and other contact details including facsimile number and electronic mail address if so provided of each member and the class of member;
- (b) the date on which each member was admitted to the Foundation;
- (c) the subscriptions payable and paid by the member; and
- (d) if applicable, the date of and reasons for, termination of membership.

9.2. **Inspection and copying**

The Register of Members is available for inspection free of charge by any member but such member may not use the information for any commercial purpose.

10. **GENERAL MEETINGS**

10.1. **Annual General Meeting**

10.1.1. An Annual General Meeting of the Foundation shall be held within five months after the end of the financial year of the Foundation as defined in sub-clause 14.1.1. of this Constitution and on a date and at a time and venue to be determined by the Council.

10.1.2. All general meetings other than the Annual General Meeting shall be Special General Meetings and should be held in accordance with this Constitution.

10.2. Special General Meeting

10.2.1. Special General Meetings may be held. The Council may, whenever it thinks fit, convene a Special General Meeting of the Foundation and, where, but for this clause more than 15 months would elapse between Annual General Meetings, shall convene a Special General Meeting before the expiration of that period.

10.3. Requisition of Special General Meetings

10.3.1. The Council shall on the Requisition of not less than 10 voting members convene a Special General Meeting.

10.3.2. The Requisition for a Special General Meeting shall state the objects of the meeting, shall be signed by the members making the Requisition and be sent to the Foundation and may consist of several documents in a like form each signed by one or more of the members making the Requisition.

10.3.3. If the Council does not cause a Special General Meeting to be held within one month after the date on which the Requisition is sent to the Foundation the members making the Requisition, or any of them, may convene a Special General Meeting to be held not later than three months after that date.

10.3.4. A Special General Meeting convened by members under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Council.

10.4. Notices (including e-service)

10.4.1. At least 21 days notice of every general meeting shall be given to every member, including life members and Fellows, entitled to receive notice at the address appearing in the Register kept by the Foundation, and to the Auditor at the Auditor's last notified address.

10.4.2. In the case of family, corporate or partnership members it is sufficient to send only one notice to the address specified in the Register.

10.4.3. A notice of general meeting shall specify the place and day and hour of meeting and shall be sent together with the Agenda for the meeting, any Notice of Motion to be dealt with at the meeting and Forms of Authority in blank for proxy votes.

10.4.4. Notices may be given by the Foundation to any person entitled under this Constitution to receive any notice by sending the notice by pre-paid post or facsimile transmission or where available, by electronic mail, to the member's registered address or facsimile number or electronic mail address recorded in the Members' Register of the Foundation.

10.4.5. Where notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying and posting the notice and service of the notice is deemed to have been effected two days after posting.

10.4.6. Where a notice is sent by facsimile transmission service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to or received at the facsimile number to which it was sent. Service of the notice shall be deemed to have been effected on the next business day after it was sent.

10.4.7. Where a notice is sent by electronic mail, service of the notice shall be deemed to have been effected on the next business day after it was sent.

10.4.8. The accidental omission to give notice to or the non-receipt of notice by any person who is entitled to receive notice of a meeting of members does not invalidate the meeting or any resolution passed at the meeting.

10.5. **Business**

10.5.1. The business to be transacted at the Annual General Meeting shall be:

- (a) consideration of the report of the President;
- (b) consideration of the financial reports including the report of the auditors;
- (c) election of Council members;
- (d) election of Office Holders from amongst Council members;
- (e) appointment of auditor;
- (f) appointment of Fellows (if recommended);
- (g) any Special Business.

10.5.2. No business other than that stated in the notice of a general meeting shall be transacted at that meeting.

10.5.3. Any members entitled to vote may submit a Notice or Notices of Motion for inclusion as Special Business at an Annual General Meeting but all Notices of Motion must be submitted in writing to the Foundation not less than 35 days prior to the proposed date of the Annual General Meeting.

10.6. **Quorum**

10.6.1. No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for general meetings shall be 25 members who are entitled to vote including those represented by proxy.

10.7. **Chair**

10.7.1. The President of the Foundation shall preside as Chair at every general meeting except:

- (a) in relation to any election for which the chairperson is a nominee; or
- (b) where a conflict of interest arises.

10.7.2. If the President is not present or is unwilling or unable to preside then the Vice President shall act as Chair and if the Vice President is not present or is unwilling or unable to preside the members present shall appoint one of their number to preside as chairperson for that meeting only.

10.8. **Adjournment**

10.8.1. If within half an hour after the appointed time for the commencement of a general meeting, a quorum is not present:

- (a) in the case of a meeting convened upon the request of members the meeting must be dissolved; and
- (b) in any other case:

- (i) the meeting shall stand adjourned to the same day in the same week at the same time and (unless another place is specified by the chairperson at the time of the adjournment or by written notice to members given before the day to which the meeting is adjourned) at the same place;
- (ii) if at the adjourned meeting the quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members personally present (being not less than five) shall be a quorum;

10.8.2. The person presiding may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place.

10.8.3. No business may be conducted at an adjourned meeting other than unfinished business from the meeting that was adjourned.

10.8.4. If a meeting is adjourned for 14 days or more, notice of the adjourned meeting must be given to members entitled to receive notice of the original meeting but otherwise it is not necessary to give notice of an adjournment or of the business to be conducted at the adjourned meeting.

10.9. **Voting**

10.9.1. Upon any question arising at a general meeting of the Foundation, each member has one vote only but in the case of a family membership each adult person included in the membership has one vote.

10.9.2. All votes must be given personally or by proxy.

10.9.3. In the case of an equality of voting on a question, the chairperson of the meeting is entitled to a second or casting vote.

10.9.4. A member is not entitled to vote at a general meeting unless all monies due and payable by the member to the Foundation have been paid other than the amount of the annual subscription payable in respect of the current financial year if the same is not yet due.

10.10. **Poll**

10.10.1. If at a meeting a poll on any question is demanded by not less than three members, it must be taken at the meeting in such manner as the chairperson may direct and the resolution of the poll shall be deemed to be a resolution of a meeting on that question.

10.10.2. A poll that is demanded on the election of a chairperson or on the question when an adjournment must be taken immediately and a poll that is demanded on any other question shall be taken at any time before the close of the meeting as the chairperson may direct.

10.11. **Manner of determining resolution**

10.11.1. If a question arising at a general meeting of the Foundation is determined on a show of hands:

- (a) a declaration by the chairperson that the resolution has been:
 - (i) carried; or
 - (ii) carried unanimously; or

(iii) carried by a particular majority; or

(iv) lost; and

(b) an entry to that effect is made in the Minute Book of the Foundation that entry is evidence of the fact without proof of the number or proportion of votes recorded in favour of or against that resolution.

10.12. Proxies

10.12.1. Every member shall be entitled to appoint another member or the chairperson of the meeting as a proxy by notice given to the Foundation not later than 24 hours before the time of the meeting in respect of which the proxy is appointed and such notice may be given to the Foundation by facsimile transmission or electronic mail.

10.12.2. The notice appointing the proxy must be in the form set out in the Appendix to this Constitution or such other form as the Council may approve.

11. PATRONS

11.1. Appointment of patrons

The Council may appoint a Patron of the Foundation for such term as the Council thinks fit.

12. COUNCIL

12.1. Powers and duties of Council

12.1.1. The affairs of the Foundation shall be managed and controlled by a Council which, in addition to any powers and authorities conferred by this Constitution, may exercise all such powers and do all such things as are within the objects of the Foundation and are not required by the Act or by this Constitution to be done by the Foundation in general meeting.

12.1.2. The Council has the management and control of the funds and other property of the Foundation.

12.2. Composition of Council

12.2.1. The Council shall be comprised of not more than 11 members.

12.2.2. A Council member shall be a natural person and may be a natural person who is the nominated representative of a corporate or partnership member under sub-clause 6.8 of this Constitution.

12.2.3 Of the members of Council, 4 members shall hold the Offices of

(a) President;

(b) Vice-President;

(c) Honorary Secretary; and

(d) Treasurer,

and no person who is not a Council member shall be elected as an Office Holder.

12.3. Term of office for Council Members and Office Holders

- 12.3.1. Each Council member shall be elected to be a Council member until the conclusion of the third Annual General Meeting after election and shall be eligible for re-election.
- 12.3.2. Each Office Holder elected shall hold office until the conclusion of the first Annual General Meeting after election and subject to this clause shall be eligible for re-election as an Office Holder.
- 12.3.3. The President shall not be re-elected or re-appointed to that office for more than five consecutive terms.
- 12.3.4. If a person is appointed as a Council member to fill a casual vacancy or as an additional Council member then the term of appointment of that person shall expire at the conclusion of the Annual General Meeting next after the appointment and the period of appointment until the next Annual General Meeting shall not be regarded as a period of office for the purpose of sub-clauses 12.3.1., 12.3.2. or 12.3.3.

12.4. Election of Council members

- 12.4.1. No person except a serving Council member shall be eligible to stand for election unless two members of the Foundation have nominated and seconded that person in writing at least 28 days before the meeting by delivering the nomination of that person to the Secretary of the Foundation. The nomination form shall be signed by the two members and by the nominee.
- 12.4.2. Notice of all persons seeking election to the Council shall be given to all members of the Foundation with the notice calling the meeting at which the election is to take place.

12.5. Casual vacancies, ill-health and additional Council members

- 12.5.1. The Council may elect or appoint a person to fill a casual vacancy of an Office Holder or Council member and such person shall hold that office until the next Annual General Meeting of the Foundation and shall be eligible for election to the Council as a serving Office Holder or Council member.
- 12.5.2. In the event of a casual vacancy for an Office Holder, at least 7 days notice of the proposal to hold an election at Council for the position shall be given to all Council members and the voting shall be by secret ballot.
- 12.5.3. In the event that an Office Holder shall be temporarily incapacitated by ill-health or is granted extended leave by the Council, the Council may appoint another Council member or member of the Foundation to act in the position of such Office Holder.
- 12.5.4. The Council may appoint an additional Council member so as not to exceed the total number of persons eligible to be members of the Council.

12.6. Disqualification of Council members

- 12.6.1. The office of a Council member shall become vacant if a Council member is:
- (a) disqualified from being a Council member by the Act;
 - (b) expelled or suspended as a member under this Constitution;
 - (c) permanently incapacitated by ill-health;

- (d) absent without apology for more than three meetings in a financial year;
- (e) no longer the duly appointed representative of a corporate member;
- (f) is removed by a resolution passed at a General Meeting of the Foundation.

12.7. Council member's interest

12.7.1. A Council member is disqualified from holding any place of profit or position of employment in the Foundation or in any company or incorporated association in which the Foundation is a shareholder or otherwise interested or from contracting with the Foundation, either as vendor, purchaser, service provider or otherwise except with express resolution of approval of the Council. Any such contract or any contract or arrangement entered into by or on behalf of the Foundation in which any Council member is in any way interested will be void unless approved by the Council.

12.8. Conflict of interest

12.8.1. A Council member shall declare his or her interest in any:

- (a) contractual matter;
- (b) disciplinary matter; or
- (c) financial matter,

in which a conflict of interest arises or may arise, and shall, unless otherwise determined by the Council, absent himself or herself from discussions of any such matter and shall not be entitled to vote in respect of any such matter. If the Council member votes the vote shall not be counted. In the event of any uncertainty as to whether it is necessary for a Council member to absent himself or herself from discussions and refrain from voting, the issue should be immediately determined by a vote of the Council, or if this is not possible, the matter shall be adjourned or deferred.

12.9. Disclosure of interests

12.9.1. The nature of the interest of such Council member must be declared by the Council member at the meeting of the Council at which the relevant matter is first taken into consideration if the interest then exists or in any other case at the first meeting of the Council after the acquisition of the interest. If a Council member becomes interested in a matter after it is made or entered into the declaration of interest must be made at the first meeting of the Council held after the Council members becomes so interested.

12.9.2. All disclosed interests must also be disclosed at each Annual General Meeting in accordance with the Act.

12.10. General disclosure

12.10.1. A general notice that a Council member is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under sub-clause 12.9. as regards such Council member and the said transactions. After such general notice it is not necessary for such Council member to give a special notice relating to any particular transaction with that firm or company.

12.11. **Recording disclosures**

- 12.11.1. Any declaration made, any disclosure or any general notice given by a Council member in accordance with sub-clauses 12.8., 12.9. and/or 12.10. must be recorded in the Minutes of the relevant meeting.

13. **COUNCIL MEETINGS**

13.1. **Meetings**

- 13.1.1. The Council must meet for the despatch of business at least six times in each year.
- 13.1.2. The Secretary shall give written notice of each Council meeting to each member of the Council except in the case of an emergency at least two business days before the date of the meeting.
- 13.1.3. Special meetings of the Council may be convened by the President or by any two members of the Council.
- 13.1.4. Written notice must be given to the members of the Council of any special meeting specifying the general nature of the business to be discussed and no other business shall be transacted at that meeting.
- 13.1.5. Notice of the Council meeting and the business may be given by facsimile transmission or electronic mail to the number or address provided by the Council member to the Foundation.

13.2. **Quorum for Council meetings**

- 13.2.1. A quorum for the conduct of the business of a meeting of the Council shall be at least half the number of then serving Council members including Office Holders and if an even number then half plus one.
- 13.2.2. In the case of a special meeting if within half an hour of the time appointed for a meeting a quorum is not present then the meeting lapses.
- 13.2.3. The Council may act notwithstanding any vacancy on the Council.

13.3. **Presiding member**

- 13.3.1. At meetings of the Council the President or in his other absence the Vice President is to preside or if neither the President nor the Vice President are present or if they are unable or unwilling to preside, the members present must choose one of their number to preside.

13.4. **Voting**

- 13.4.1. Questions arising at a meeting of the Council or any meeting of any sub-committee appointed by the Council shall be determined on a show of hands or, if a member of the Council requests, by a poll taken in such manner as the person presiding at the meeting may determine.
- 13.4.2. Each member present at a meeting of the Council or of any sub-committee appointed by the Council (including the person presiding at the meeting) is entitled to one vote and in the event of inequality of votes on any question the person presiding may exercise a second or casting vote.

13.5. Written resolution and electronic meetings and voting

13.5.1. If all the members of the Council entitled to receive notice of a Council meeting and to vote on the resolution sign a document or documents containing a statement to the effect that they are in favour of the resolution set out in the document, a Council resolution in those terms is passed at the time when the last Council member signs.

13.5.2. A facsimile or electronic message containing the text of the resolution expressed to have been assented to by a Council member that is sent to the Foundation is deemed to be a document signed by that Council member at the time of its receipt by the Foundation.

13.5.3. A meeting of the Council may be held by a telephone or video conference link and the procedures set out in these Rules for a meeting of the Council shall apply except that the members participating are not required to be present in the same room.

13.6. Validity of decisions

13.6.1. Each resolution passed or thing done by or with the participation of a person acting as a member of the Council is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in an office voting on the resolution or doing the thing.

13.7. Adjournment

13.7.1. The Council may adjourn any meeting and subject to this Constitution otherwise regulate its meetings as it decides.

14. FINANCE

14.1. Financial year

14.1.1. The financial year of the Foundation shall end on 30 June in each calendar year.

14.2. Maintain accounting records

14.2.1. The Foundation shall keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the Foundation in accordance with the Act.

14.3. Accounts and reports at annual general meeting

14.3.1. The accounts, together with the Auditor's Report on the accounts, the Council Statement and the Council's Report shall be available for viewing at the Foundation's offices 7 days prior to the Annual General Meeting, and shall be laid before members at the Annual General Meeting.

14.4. Returns lodged at Office of Consumer & Business Affairs

14.4.1. If the Foundation is or becomes a Prescribed Association as defined by the Act the Annual Return shall be lodged through the Office of Consumer & Business Affairs within six months after the end of each financial year and it must be accompanied by a copy of the accounts, the Auditor's Report, the Council Statement and the Council's Report.

15. **AUDITOR**

15.1. **Appointment of auditor**

- 15.1.1. At each Annual General meeting the members shall appoint a person who, if the Foundation is or becomes a Prescribed Association, is qualified in accordance with the provisions of the Act, but otherwise a person who is not a member of the Council and who is otherwise suitably qualified, to be Auditor of the Foundation.
- 15.1.2. The Auditor shall hold office until the next Annual General Meeting and is eligible for re-appointment.
- 15.1.3. If an appointment is not made at an Annual General Meeting the Council shall appoint an auditor for the current financial year.

16. **MINUTES**

16.1. **Minutes to be maintained**

- 16.1.1. Proper minutes of all proceedings of general meetings of the Foundation and of meetings of the Council and any committee shall be entered within one month after the relevant meeting in Minute Books kept for that purpose.
- 16.1.2. The Minutes kept pursuant to this Rule must be confirmed by the members of the Foundation or the members of the Council or committee (as relevant) at a subsequent meeting.
- 16.1.3. The Minutes kept pursuant to this Rule shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting at which the Minutes are confirmed.
- 16.1.4. Where Minutes are entered and signed they shall, until the contrary is proved, be evidence that the meeting was convened and duly held, that all proceedings held at the meeting shall be deemed to have been duly held and that all appointments made at the meeting shall be deemed to be valid.

17. **FUNDS**

17.1. **Funds to be collected**

- 17.1.1. The Treasurer of the Foundation must:
 - (a) supervise the collection and receipt of all monies due to the Foundation and the making of all payments authorised by the Foundation; and
 - (b) keep correct accounts and books showing the financial affairs of the Foundation with full details of all receipts and expenditure connected with the activities of the Foundation.

17.2. **Cheques etc signatories**

- 17.2.1. All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Foundation shall be signed, drawn, accepted, endorsed, or otherwise executed as the case may be by any two authorised members of the Council or in such other manner as the Council determines.

18. **COMMON SEAL**

18.1. **Common seal**

- 18.1.1. The Foundation shall have a common seal upon which its corporate name shall appear in legible characters.
- 18.1.2. The seal must only be used with the express authorisation of the Council and every use of the seal shall be recorded in the Minute Book of the Foundation.
- 18.1.3. The affixing of the seal shall be witnessed by two members of the Council who are authorised by the Council to witness the affixation of the seal.

19. **CUSTODY OF BOOKS, RECORDS**

19.1. **Custody and inspection of books**

- 19.1.1. The Secretary must ensure the safe custody and control of all books, documents and securities of the Foundation.
- 19.1.2. All accounts, books, securities and any other relevant documents of the Foundation must be available for inspection free of charge by any Council member upon request.
- 19.1.3. A Council member may make a copy of any accounts, books, securities or other relevant documents of the Foundation.

20. **APPOINTMENT OF EXECUTIVE COMMITTEE AND OTHER COMMITTEES**

20.1. **Executive**

- 20.1.1. The Council may appoint such of its members including the Office Holders to a committee referred to as “the Executive Committee”.
- 20.1.2. The Executive Committee may exercise such powers and functions of the Council, without derogating from the power of the Council to exercise such powers, as are delegated to it by the Council.

20.2. **Appointment of other committees**

- 20.2.1. The Council may by resolution create or establish or appoint committees which must include at least two members of Council and may include persons who are not members of the Council, or individual officers to carry out such duties and functions and with such powers, including the power to make decisions binding on the Foundation, as the Council determines from time to time.

20.3. **Chair, quorum and terms of reference**

- 20.3.1. In resolving to appoint any committee including the Executive Committee, the Council shall:
- (a) appoint a chair of the committee;
 - (b) fix the quorum applicable for the meeting of such committee;
 - (c) determine the terms of reference including any delegated powers of the committee.

20.4. **Procedure for committees**

Except as otherwise specified by the Council, the rules of procedure for meetings of any committee including the Executive Committee shall so far as is practical be the same as for the Council.

21. **DELEGATIONS**

21.1. **Delegation of powers**

21.1.1. The Council may by resolution delegate such of its functions or powers as are specified in the resolution other than:

- (a) the power of delegation;
- (b) a function imposed on the Council by the Act or by any other law or this Constitution or by resolution of the Foundation in general meeting as being a function which cannot be delegated.

21.2. **Delegated function exercised in accordance with the terms**

21.2.1. A function or power the exercise of which has been delegated under this clause may, whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

21.3. **Procedure of delegated entity**

21.3.1. The entity exercising delegated powers shall make decisions in accordance with the objects of this Constitution and shall promptly supply the Council with details of all material decisions and shall provide any other reports, minutes and information as the Council may require from time to time.

21.4. **Delegation may be conditional**

21.4.1. A delegation under this clause may be made subject to such conditions or limitations as may be specified in the delegation.

21.5. **Revocation of delegation**

21.5.1. The Council may by resolution at any time revoke wholly or in part any delegation made under this clause.

22. **PUBLIC OFFICER**

22.1. **Public officer**

The Council must appoint a Public Officer of the Foundation for the purpose of the Act.

22.2. **Default appointment**

In default of any appointment under clause 22.1 the Secretary shall be the Public Officer and upon the appointment of any person as Secretary, that person shall then be deemed to be the Public Officer.

23. **INDEMNITY**

23.1. **Indemnity to Council members**

23.1.1. Every Council member and employee of the Foundation shall be indemnified out of the property and assets of the Foundation against any liability incurred by them in

their capacity as Council member or employee or defending any proceedings, whether civil or criminal, in which judgment is given in their favour or in which they are acquitted or in connection with any application in relation to any such proceedings in which relief is granted by the Court.

23.1.2. The Foundation shall indemnify its Council members and employees against all damages and losses (including legal costs) for which any such Council member or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:

- (a) in the case of a Council member performed or made whilst acting on behalf on and with the authority express or implied of the Foundation; and
- (b) in the case of an employee performed or made in the course of and within the scope of his or her employment by the Foundation.

24. ALTERATION OF CONSTITUTION

24.1. Procedure and effect

24.1.1. This Constitution may be altered (including an alteration of the Foundation's name) by Special Resolution of the members of the Foundation. This alteration may include a rescission of the Constitution or replacement by a substitute Constitution.

24.1.2. The alteration shall be registered with the Office of Consumer & Business Affairs, Corporate Affairs as required by the Act.

24.1.3. The altered or substituted Constitution shall bind the Foundation and every member of the Foundation to the same extent as if each member had respectively signed and sealed them and agreed to be bound by all the provisions thereof.

25. WINDING-UP

25.1. Winding-up by resolution

25.1.1. The Foundation may be wound up in the manner provided for in the Act.

25.1.2. If after the winding up of the Foundation there remains "surplus assets" as defined by the Act, such surplus assets shall not be paid to or distributed among any member of the Foundation but shall be given to or transferred to any organisation which has similar objects to this Foundation which is an organisation approved by the Commissioner of Taxation as a fund, authority or institution referred to in subsection 78(4) of the *Income Tax Assessment Act 1936* and has Rules which prohibit the distribution of its assets and income to its members. Such organisation or organisations shall be identified and determined by a resolution of members in a general meeting of which the decision to wind up the Foundation is determined.

26. TRANSITIONAL PROVISIONS

26.1 All persons who are members of the Foundation at the adoption of this Constitution shall continue as members for the period of their paid up subscription.

26.2 All persons who were appointed Fellows of the Foundation as at the date of adoption of this Constitution shall continue as Fellows of the Foundation.

26.3 Any other award or honour granted to any person by the Foundation shall continue.

26.4 The persons appointed as Office Holders and Council members as at the date of the adoption of this Constitution shall continue until the conclusion of the Annual General Meeting next

following the adoption of this Constitution in the office held by that person or as a Council member.

- 26.5 At the Annual General Meeting next following the adoption of this Constitution all Office Holders and Council members shall be eligible for election or re-election as Council members and Office Holders shall be eligible for re-election to an Office and the following provisions shall apply:
- (a) David Moyle AM shall be eligible for re-election as President and if re-elected shall be treated under this Constitution as being elected in the 5th term of a 5 term period.
 - (b) David Hansman if re-elected as a Council member shall be elected for a term of 3 years;
 - (c) Rob Morrison OAM if re- elected as a Council member shall be re-elected for a term of 2 years;
 - (d) Susie Herzberg if re-elected as a Council member shall be re-elected for a term of 3 years;
 - (e) Megan Dyson if re-elected as a Council member shall be re-elected for a term of 2 years;
 - (f) Bob Sharrad if elected as a Council member shall be elected for a term of 2 years;
 - (g) Bob Lott if elected as a Council member shall be elected for a term of 1 year;
 - (h) David Macklin if elected as a Council member shall be elected for a term of 1 year;
 - (i) David Moyle AM if elected as a Council member shall be elected for a term of 1 year.

APPENDIX A

NOTICE OF APPOINTMENT OF PROXY

I, of

..... being a member of Nature Foundation SA
Incorporated (“**the Foundation**”)

appoint

of

or failing him or her the Chairman of the meeting being a member of the Foundation as my proxy to vote for
me on my behalf at the Annual/Special* General Meeting of the Foundation to be held on
.....[date of meeting] or at any adjournment of that meeting.

My proxy is authorised to vote in favour of/against* the following resolution –

[insert details of resolution]

.....
[signed]

.....
[date]

If no direction is given to the proxy then the proxy is entitled to vote at his or her discretion.

* *delete if not applicable*