

Adopted: 14 October 2019

# Constitution

## **Nature Foundation Limited**

ACN 638 003 577

ABN 24 131 531 874

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A company limited by guarantee

# Constitution of Nature Foundation Limited

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# Preliminary

## 1. Defined terms & interpretation

1.1 In this Constitution unless the contrary intention appears:

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

**Auditor** means the Company's auditor, as appointed in accordance with rule 52.

**Board** means all or some of the Directors acting as a board.

**CEO** means the chief executive officer of the Company, appointed pursuant to rule 50.

**Chair** means the person appointed as such pursuant to rule 32.

**Committee** means a committee established in accordance with rule 43.

**Company** means Nature Foundation Limited.

**Company Secretary** means any person appointed by the Directors in accordance with rule 51, and if there are joint secretaries, any one or more of such joint secretaries.

**Constitution** means the constitution of the Company as amended from time to time.

**Corporations Act** means the *Corporations Act 2001* (Cth) as modified or amended from time to time.

**Department** means the Commonwealth Department of the Environment and Energy.

**Deputy Chair** means the person appointed as such pursuant to rule 32.

**Director** means any person occupying the position of director of the Company, and **Directors** has the same meaning as Board.

**Fees** means any membership fees payable in accordance with rule 8.

**Foundation** includes the Company and any predecessor entities, including Nature Foundation Incorporated (Association number A7772).

**Initial Directors** are those persons who have consented to act as directors as of the date of the Company's registration.

**ITAA** means the Income Tax Assessment Act 1997.

**Member** means a member of the Company admitted in accordance with rule 7.

**Office** means the Company's registered office.

**Officeholders'** means those persons appointed in accordance with rule 32.

**Poll** means a secret ballot undertaken in accordance with rule 19.

**Public Fund** means a fund established in accordance with rule 3.2.

**Register** means the register of Members of the Company.

**Representative** means a person appointed as such under rule 11.

**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* (SA) or similar legislation.

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

- 1.2 In this Constitution, unless the contrary intention appears:
- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
  - (b) words importing natural persons include corporations;
  - (c) words and expressions defined in the Corporations Act have the same meaning in this Constitution; and
  - (d) headings are for ease of reference only and do not affect the construction of this Constitution.
- 1.3 Unless the contrary intention appears in this Constitution, an expression in a rule of this Constitution has the same meaning as in a provision of the Corporations Act that deals with the same matter as the rule.
- 1.4 While the Company is a registered charity, the ACNC Act overrides any clause in this Constitution which is inconsistent with that Act.
- 1.5 To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

## 2. Transitional provisions

This Constitution must be read subject to the transitional provisions set out in Schedule 1. Schedule 1 applies to the extent of any inconsistency with the remainder of this Constitution.

# Objects and powers

## 3. Objects

- 3.1 The objects for which the Company is established are solely for the public charitable purposes to:
- (a) to conserve, protect and restore Wildlife and sites of natural, cultural and palaeontological 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* (SA), 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 Company;
  - (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 provide land, facilities, services or opportunities for members and the public to experience, appreciate and enjoy the natural environment;
- (h) to enter into trust, contractual or other 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 Company;
- (i) 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;
- (j) 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;
- (k) to support eradication programmes for the removal of feral fauna and flora or other threats to Wildlife or Wildlife habitat in South Australia;
- (l) to promote or to oppose in a non-party political manner legislative or other measures affecting the interests or objects of the Company; and
- (m) in furtherance of the mutual interest of the members of the Company to take such action as the Company may from time to time consider proper including, without limitation, establishing other entities to support the objects of the Company.

3.2 The Company will establish and maintain a Public Fund for the specific purpose of supporting the environmental objects/purposes of the Company. The Public Fund is established to receive all gifts of money or property for this purpose and any money received because of such gifts must be credited to its bank account. The Public 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.

## 4. Powers

- 4.1 The Company may exercise all of the powers listed in section 124(1) of the Corporations Act and any other powers which are conferred on it by law.
- 4.2 The Company may only exercise its powers to:
  - (a) carry out the objects in rule 3; and
  - (b) do all things incidental or convenient in relation to the exercise of power under rule 3.

# Income and property of Company

## 5. Income and property of Company

- 5.1 The income and property of the Company shall be used and applied solely in promotion of the Company's objects set out in rule 3 and no portion shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to the Members, directors or trustees of the Company.
- 5.2 Any allocation of funds or property to other persons or organisations will be made in accordance with the established purposes of the Company and may not be influenced by the preference of the donor.

- 5.3 The Company must not distribute, pay or transfer to the Members directly or indirectly by way of dividend, bonus or otherwise any of the property or income of the Company provided that nothing will prevent the payment in good faith of remuneration to any officers or servants of the Company or to any Member in return for any services actually rendered to the Company or for goods or services supplied in the ordinary and usual way of business nor prevent the payment of interest at reasonable and proper commercial rates on money borrowed from any Members or reasonable and proper rent for premises demised or let by any Member.
- 5.4 Each Member undertakes to contribute to the Company's property if the Company is wound up while he, she or it is a Member or within one year after he, she or it ceases to be a Member, for payment of the Company's debts and liabilities contracted before he, she or it ceased to be a Member and of the costs, charges and expenses of winding up and for an adjustment of the rights of contributories among themselves such amount as may be required not exceeding ten dollars (\$10.00).

## 6. Winding Up

- 6.1 Subject to rule 61, if any surplus remains following the winding up of the Company, the surplus must not be paid to or distributed amongst Members, but will be given or transferred to another organisation which, by its constitution is:
- (a) a not-for-profit organisation;
  - (b) required to pursue charitable purposes only;
  - (c) required to apply its profits (if any) or other income in promoting its objects which must be similar to those of the Company;
  - (d) endorsed as a deductible gift recipient under sub-division 30-B of the ITAA; and
  - (e) prohibited from making any distribution to its members or paying fees to its directors,

such organisation to be determined by the Members at, or before, the winding up and in default, by application to the Supreme Court of South Australia.

- 6.2 True accounts will be kept of the income, expenditure, assets and liabilities of the Company; the sums of money received and expended by the Company and the matter in respect of which such receipt and expenditure takes place; and all sales and purchases of real and personal property including goods of all nature by the Company. Subject to any reasonable restrictions as to the time and manner of inspecting the accounts of the Company that may be imposed in accordance with this Constitution, the accounts will be open to the inspection of the Members. Once at least in every year the accounts of the Company will be examined by one or more properly qualified Auditor or Auditors who will report to the members in accordance with the provisions of the Corporations Act.

## Membership

### 7. Admission

- 7.1 The number of Members is unlimited.



- 7.2 The Board may establish different classes of membership and prescribe the qualifications required to become a Member in a particular class and the rights, obligations and privileges of Members.
- 7.3 Applications for membership of the Company must be made in writing, signed by the applicant and accompanied by the payment of any applicable membership fee.
- 7.4 The Directors will consider each application for membership at the next Directors' meeting following receipt of the application, and may, without giving reasons, accept or reject such application.
- 7.5 If an application is rejected, the Company Secretary will notify the applicant and refund any applicable membership fee.
- 7.6 As soon as practicable following acceptance of an application for membership, the Company Secretary will send the applicant written notice of the acceptance and enter the member's name into the Register, at which time the applicant becomes a Member.
- 7.7 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.
- 7.8 The lodging of any application for membership is conclusive evidence that the applicant has agreed to become a Member and to be bound by this Constitution and any other rules or codes or by-laws of the Company.

## 8. Membership fees

- 8.1 The Board may, from time to time, determine whether membership fees are payable for a particular class or classes of membership (and if so, the amount of those fees and method of payment).
- 8.2 Subject to rule 8.4, each Member must pay the relevant membership fees (if any) in accordance with this Constitution, the terms of their membership, and any other rules determined by the Board from time to time.
- 8.3 Any Member whose membership fees are outstanding at the date of formal notice of any general meeting is distributed by the Company is not entitled to vote at that meeting.
- 8.4 The Board reserves the right to waive, vary or extend the time for payment of any membership fees, including in relation to rules 8.3 and 9.1(c).

## 9. Ceasing to be a Member

- 9.1 A Member's membership of the Company will cease if:
- (a) the Member gives the Company Secretary written notice of resignation, from the date of receipt of that notice by the Company Secretary;
  - (b) the Member is expelled in accordance with rule 9.3;
  - (c) the Member's Fees remain unpaid for a period of 3 months after the day for payment;
  - (d) the Member is convicted of an indictable offence; or
  - (e) the Member dies.
- 9.2 Any Member ceasing to be a Member will remain liable for and will pay to the Company any moneys which were due to the Company at the date of ceasing to be a Member.

9.3 The Board may from time to time, prescribe rules in relation to the disciplining (including but not limited to the censure, fining, suspension, expulsion and reinstatement) of Members.

9.4 A Member expelled from the Company does not have any claim on the Company, the Directors, funds or property.

## 10. Powers of attorney

10.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the attorney to the Company for noting.

10.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.

10.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

## 11. Representatives

11.1 Any Member may by written notice to the Company Secretary:

- (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
- (b) remove its Representative.

11.2 A Representative is entitled to:

- (a) exercise at a general meeting, all the powers which the Member who appointed him or her could exercise if it were a natural person; and
- (b) be counted towards a quorum on the basis that the Member is to be considered personally present at a general meeting by its Representative.

11.3 A certificate executed in accordance with section 127 of the Corporations Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.

11.4 The Chair of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the Chair of the general meeting.

11.5 The appointment of a Representative may set out restrictions on the Representative's powers.

## General meetings

### 12. Calling general meeting

12.1 The Directors may call a general meeting at any time and must call a general meeting in accordance with the Corporations Act.

12.2 A Member may:

- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act; and
  - (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.
- 12.3 The Directors must call the first annual general meeting of the Company within 6 months of registration of the Company.

## 13. Notice of general meeting

- 13.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to all Members entitled to receive notice and other persons referred to in rule 57 of any general meeting.
- 13.2 A notice calling a general meeting:
- (a) must specify the place, date and time of 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) must state the general nature of the business to be transacted at the meeting; and
  - (c) may specify a place, postal address, facsimile number and electronic address for the purposes of proxy appointment; and
  - (d) must comply with the requirements of rules 55 and 56.
- 13.3 The business to be transacted at an annual general meeting may, regardless of whether stated in the notice, include:
- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
  - (b) the election of directors; and
  - (c) the appointment and fixing of the remuneration of the Auditor.
- 13.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under rule 12.2).
- 13.5 The Directors must give notice to all Members and other persons referred to in rule 57 of:
- (a) the postponement or cancellation of a general meeting; and
  - (b) the place, date and time of any new meeting.
- 13.6 The accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or other person referred to in rule 57 or the non-receipt of a notice (or form) by any Member or other person referred to in rule 57 does not invalidate the proceedings at or any resolution passed at the general meeting.

## Proceedings at general meetings

### 14. Member

In rules 15 (Quorum), 16 (Chair), 18 (Decision on questions), 19 (Taking a poll) and 20 (Voting rights), **Member** includes a Member present in person or by proxy, attorney or

Representative. A Member may only be present in one capacity, in accordance with rule 15.2.

## 15. Quorum

- 15.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 15.2 A quorum of Members is 25 Members. Members may attend in person (including by use of technology), or by proxy, attorney or Representative.
- 15.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting, then:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
  - (b) in any other case:
    - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
    - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the meeting is dissolved.

## 16. Chair

- 16.1 The Chair, or in the Chair's absence the Deputy Chair, will be the chairperson at every general meeting.
- 16.2 The Directors present may elect a chairperson of a general meeting if:
- (a) there is no Chair or Deputy Chair; or
  - (b) neither the Chair nor Deputy Chair is present within 15 minutes after the time appointed for holding the general meeting;
  - (c) the Chair has declared a conflict of interest for the meeting; or
  - (d) the Chair and Deputy Chair are unwilling to act as chairperson of the general meeting.
- 16.3 If no election is made under rule 16.2, then:
- (a) the Members may elect one of the Directors present as chairperson of the general meeting; or
  - (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson of the general meeting.

## 17. Adjournment

- 17.1 The chairperson of a general meeting at which a quorum is present:
- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
  - (b) must adjourn the general meeting if the meeting directs him or her to do so.

- 17.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 17.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 17.4 Notice of an adjourned general meeting must only be given in accordance with rule 13.1 if a general meeting has been adjourned for more than 21 days.

## 18. Decision on questions

- 18.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried at a general meeting if a majority of the votes cast on the resolution are in favour of the resolution.
- 18.2 The chairperson of a general meeting has a casting vote at general meetings in addition to the chairperson's votes as a Member, proxy, attorney or Representative.
- 18.3 A resolution put to the vote of a meeting is decided on a show of hands unless a Poll is (before or on the declaration of the result of the show of hands) demanded either by:
- (a) the chairperson of the meeting;
  - (b) at least 5 members entitled to vote on the resolution; or
  - (c) members who collectively hold at least 5% of the votes which may be cast on the resolution.
- 18.4 Unless a Poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried unanimously or carried by a particular majority or lost or not carried by a particular majority and an entry to that effect in the book containing the minutes of proceedings of the Company will be conclusive evidence of the fact without particulars of the number or proportion of the votes recorded in favour of or against the resolution.
- 18.5 The demand for a Poll may be withdrawn.
- 18.6 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.
- 18.7 If there is a dispute at a general meeting about a question of procedure, the chairperson of the general meeting may determine the question.

## 19. Taking a Poll

- 19.1 If a Poll is duly demanded, it will be taken when and, in the manner, that the chairperson of the general meeting directs.
- 19.2 The result of the Poll will be the resolution of the meeting at which the Poll was demanded.
- 19.3 The chairperson of a general meeting may determine any dispute about the admission or rejection of a vote on a Poll.
- 19.4 The chairperson's determination will be final and conclusive.
- 19.5 A Poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.

- 19.6 After a Poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

## Votes of Members

### 20. Voting rights

A Member entitled to vote has one vote unless specified otherwise in this Constitution.

### 21. Resolutions without meetings

- 21.1 Subject to rule 21.3, the Company may pass a resolution without a general meeting being held, if seventy five percent (75%) of the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 21.2 For the purposes of rule 21.1:
- (a) the document may be sent to voting members in any manner described in rule 13;
  - (b) the resolution is passed when 75% (seventy five percent) of voting Members sign;
  - (c) separate copies of a document may be used for signing by voting Members if the wording of the resolution and statement is identical in each copy;
  - (d) a signature of a voting Member transmitted to the Company electronically is sufficient evidence of signature.
- 21.3 Rule 21.1 does not apply to a resolution to remove an auditor.
- 21.4 Where a document is signed in accordance with rule 21.1 the document is to be taken as a minute of the passing of the resolution.

### 22. Objections

- 22.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.
- 22.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.

### 23. Votes by proxy

- 23.1 If a Member appoints a Representative, proxy or an attorney, the Representative, proxy or attorney may vote on a show of hands (subject to sections 250BB(1)(a) and (b) of the Corporations Act to the extent that the appointment of proxy specifies the way the proxy is to vote).
- 23.2 A proxy must be a Member, but a Representative or attorney need not be.
- 23.3 A Representative, proxy or attorney may demand or join in demanding a poll.
- 23.4 A Representative, proxy or attorney may vote on a poll.
- 23.5 A Representative, proxy or attorney may vote or abstain as he or she chooses except where the appointment of the Representative, proxy or attorney directs the way the Representative, proxy or attorney is to vote on a particular resolution. If a Representative

proxy or attorney votes at all, the Representative, proxy or attorney will be deemed to have voted all directed proxies or attorneys in the manner directed.

## 24. Document appointing proxy

- 24.1 Without limitation to rule 10 with respect to powers of attorney, an appointment of a proxy is valid if it is in the form prescribed by the Board, signed by the Member making the appointment and contains the information required by section 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 24.2 For the purposes of rule 24.1, an appointment received at an electronic address will be taken to be signed by the Member if the appointment has been verified in a manner approved by the Directors.
- 24.3 A proxy's or attorney's appointment is valid at an adjourned general meeting.
- 24.4 An attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 24.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
    - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
    - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
  - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 24.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Company Secretary.

## 25. Lodgement of proxy or attorney

- 25.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee is intended to vote; or
  - (b) the taking of a poll on which the appointee is intended to vote.
- 25.2 The Company receives an appointment of a proxy or attorney and any power of attorney or other authority under which the appointment was executed when they are received at:

- (a) the Office;
- (b) a facsimile number at the Office; or
- (c) a place, postal address, facsimile number or electronic address specified for that purpose in the notice of meeting.

## 26. Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) became mentally incapacitated; or
- (b) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

# Appointment and removal of Directors

## 27. Number of Directors

The number of Directors will be no less than five (5) and no more than nine (9).

## 28. Composition of the Board

- 28.1 The Company will have Directors who collectively have skills in the categories or fields as determined by the Board from time to time.
- 28.2 The CEO (not including any person acting in that position temporarily) may not be a Director for the period of his or her appointment as CEO.
- 28.3 All Directors hold office subject to this Constitution.

## 29. Appointment of Directors

- 29.1 The initial Directors of the Company are the persons who have consented to act as Directors as of the date of the Company's registration.
- 29.2 Other than the initial Directors, the Board will be elected in accordance with this Constitution and the Corporations Act.

## 30. Nomination and Election of Directors

- 30.1 The Members may elect a Director by ordinary resolution passed at a general meeting.
- 30.2 A person may stand for election as a Director provided always that they are a Member and consistent with rules 25, 55 and 56 a written notice is sent to or left at the Office which:
  - (a) states the details of the Member nominating a Member for election as Director, and another Member seconding that nomination;
  - (b) states that the nominated Member consents to the nomination;



- (c) states, if applicable, the number of years the nominated Member has served as a Director on consecutive appointments; and
  - (d) signed by each of the proposing Member, the seconding Member, and the nominated Member.
- 30.3 A notice given in accordance with rule 30.2 must be left at the Office at least 28 days before the relevant general meeting.
- 30.4 The Chair will announce the appointment of newly elected Directors to the Members at the general meeting. Upon the formal closing of the meeting, retiring members will cease as Directors and Directors elected during the meeting will take up their Director role.

## 31. Term and rotation

- 31.1 Rule 31 is subject to the transitional provisions set out in the Schedule to this Constitution, which will apply from incorporation of the Company until the Company's 2021 annual general meeting.
- 31.2 Subject to the remainder of this rule 31, each Director will be elected for a term of up to three (3) years.
- 31.3 Subject to rules 31.4 and 31.5, one-third of all Directors or, if their number is not a multiple of three then the number nearest to but not more than one-third must retire at each annual general meeting.
- 31.4 The Directors to retire by rotation at an annual general meeting are those Directors who have been longest in office since their last appointment. Retiring Directors hold office until the end of the relevant meeting.
- 31.5 Retiring Directors are eligible for re-election but may not serve more than three (3) consecutive terms.
- 31.6 The Directors may appoint a person, who is also a member, to fill a casual vacancy, who holds office until the annual general meeting following the appointment, and who is then eligible for re-appointment by the Members.
- 31.7 A Member who has served as a Director and becomes ineligible for further consecutive appointments under rule 31.5, is eligible to nominate for appointment at the annual general meeting closest to the third anniversary of their retirement.

## 32. Officeholders

- 32.1 Any Director is eligible for election to the position of Chair or Deputy Chair (**Officeholders**).
- 32.2 The Chair and Deputy Chair will be elected by the Board in accordance with procedures determined by the Board from time to time. The Chair must not be the same individual for more than 9 years in a row.
- 32.3 Each Director standing for election as an Officeholder will be proposed by another Director and, if more than one Director is nominated at the relevant Directors' meeting, the Directors will vote by secret ballot on which Director will take up the contested appointment.
- 32.4 The Members will be advised of the appointment of Officeholders.

- 32.5 If the Chair vacates that office for any reason the Deputy Chair succeeds to the office of Chair until a replacement is appointed.
- 32.6 If an Officeholder vacates that office for any reason, the Board may elect a replacement.
- 32.7 In the absence of the Chair, the Deputy Chair, or such other Director as nominated by the Board, will assume the role and responsibilities of the Chair.

### 33. Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Corporations Act or other legislation from holding office or continuing as a Director;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it;
- (c) is absent without the permission of the Chair for more than three (3) Directors' meetings in a financial year;
- (d) resigns by notice in writing to the Company;
- (e) is removed by a resolution of the Company passed in general meeting;
- (f) retires in accordance with this Constitution;
- (g) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act;
- (h) ceases to be eligible to be a Director;
- (i) dies.

### 34. Resignation of directors

Any Director may retire from office upon giving notice in writing to the Company of his or her intention to do so.

### 35. Removal of directors

- 35.1 Subject to the provisions of this Constitution and the Corporations Act, the Members may by ordinary resolution remove a Director and may by an ordinary resolution appoint another person instead.
- 35.2 The person so appointed will hold office only until the next following annual general meeting at which the election of Directors takes place subject to rule 31.

## Powers and duties of Directors

### 36. Directors to manage the Company

- 36.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- 36.2 Every Director and other agent or officer of the Company must act at all times, in good faith, in a bona fide manner and in the interests of the Company. Failure to do so may result in removal of the Director from the Board by the Members.
- 36.3 Every Director and other agent or officer of the Company must:
- (a) keep secret all aspects of all transactions of the Company, except:
    - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
    - (ii) as required by law;
    - (iii) when requested by the Directors to disclose information, to the auditors of the Company or a general meeting of the Company; and
  - (b) subject to rule 41.6, if requested by the Directors, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.

## 37. Awards and acknowledgements

The Board may make an award or acknowledgement to a person who or entity which, in the opinion of the Board, 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 Board, which may but need not include membership of the Company.

## Remuneration of Directors

### 38. Remuneration and expenses of directors

- 38.1 No Director who has been elected by the Members may receive any remuneration for his or her services in his or her capacity as a Director of the Company.
- 38.2 Directors may be reimbursed for all travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors or any Committee or general meetings of the Company or otherwise in connection with the business of the Company, in accordance with any policy adopted by the Board from time to time.

## Proceedings of Directors

### 39. Directors' meetings

- 39.1 Directors' meetings must be held at least six (6) times each calendar year.
- 39.2 A quorum is one more than half the total number of Directors entitled to vote, or such greater number as is determined by the Board.
- 39.3 The Chair, or any two Directors together, may at any time, and the Company Secretary must on the request of those people, call a Directors' meeting.

- 39.4 A Directors' meeting must be called on at least 48 hours' notice of the proposed meeting being provided to each Director.
- 39.5 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. The place of the meeting is deemed to be the place where the Chair is physically located.
- 39.6 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 39.7 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 39.8 Subject to rule 41, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 39.9 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

## 40. Decision on questions

- 40.1 Subject to this Constitution (including rule 45), questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to rule 41, each Director has one vote. If two or more Directors call for a secret ballot, the vote will be conducted by secret ballot.
- 40.2 If there is an equality of votes, the Chair of a meeting of Directors will have a casting vote in addition to his or her deliberative vote.

## 41. Directors' interests

- 41.1 The Directors must comply with their duties as directors as required by law, including the Corporations Act and Australian Charities and Not-for-profits Commission Act (where applicable):
- (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;
  - (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;
  - (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.
- 41.2 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 rule 46):
- (a) to the other Directors; or
  - (b) if all of the Directors have the same conflict of interest, to the Members at the next general meeting, or at an earlier time if reasonable to do so.

- 41.3 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 41.4 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 rule 41.5:
- (a) be present at the meeting while the matter is being discussed; or
  - (b) vote on the matter.
- 41.5 A Director may still be present and vote if:
- (a) their interest arises because they are a Member of the Company, and the other 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;
  - (c) their interest relates to a payment by the Company under rule 65 (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.
- 41.6 A Director who is an employee or board member of a Member may disclose to that Member any information (confidential or otherwise) about the affairs, finances and accounts of the Company that comes into the Director's possession from time to time, subject to requiring the Member to maintain the confidentiality of any confidential information. This right will not apply if:
- (a) the exercise of such a right is inconsistent with this Constitution or the Director's fiduciary or other legal duties; and
  - (b) the Board for reasons of good governance and acting reasonably, has directed that such information not be disclosed to the relevant Member.

## 42. Remaining Directors

- 42.1 The Directors may act even if there are vacancies on the Board.
- 42.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act to call a general meeting and for any other purpose.

## 43. Committees

- 43.1 The Directors may establish committees, with powers and functions as determined by the Board, to advise the Directors on specified matters (**Committees**).
- 43.2 Each Committee will be chaired by a Director unless otherwise agreed by the Board.

- 43.3 Unless otherwise agreed by the Directors, meetings of any Committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each Committee member was a Director.
- 43.4 Rules 39 and 46 regarding attendance by technology and written resolutions applies to the Committees.

## 44. Delegation

- 44.1 The Directors may, upon any terms and conditions or restrictions as they see fit, delegate any of their powers, other than those which by law must be dealt with by the Directors as the Board, to:
- (a) a Committee;
  - (b) a Director;
  - (c) an employee of the Company; or
  - (d) any other person.
- 44.2 A Committee to which, or person to whom, any powers have been delegated must exercise their powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 44.3 A Committee to which, or person to whom, any powers have been delegated may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 44.4 The Directors may at any time revoke any delegation of power.

## 45. Attendance via technology

- 45.1 For the purpose of this Constitution the contemporaneous linking together by technological means ("**electronic meeting**") of a number of Directors being not less than the quorum will be deemed to constitute a meeting of the Board and all the provisions of this Constitution as to meetings of the Board will apply to any such meeting held by technology so long as the following conditions are met:
- (a) all the Directors for the time being entitled to receive notice of a meeting of the Board are entitled to notice of a meeting conducted by technology;
  - (b) notice of the meeting may be given by any technology means determined and agreed to by the Board including but not limited to telephone, email, tablet or by any other electronic means or manner permitted by the Board;
  - (c) each of the Directors taking part in the meeting will be able to hear and be heard by each of the other Directors taking part at the commencement of the meeting and each Director so taking part is deemed for the purposes of this Constitution to be present at the meeting;
  - (d) at the commencement of the meeting each Director will announce his or her presence to all the other Directors taking part in the meeting; and
  - (e) consent for Directors to participate via technology may be a standing consent.

- 45.2 A Director may not leave a meeting conducted via technology by disconnecting his or her telephone, audio-visual, tablet or other technological device unless that Director has notified the Chair of the meeting.
- 45.3 A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a meeting via technology unless that Director has obtained the express consent of the Chair to leave the meeting.
- 45.4 A minute of the proceedings of a meeting via technology is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the Chair.

## 46. Written resolutions

- 46.1 The Directors may pass a resolution without a Directors' meeting being held if a majority of Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution passes when the requisite majority has signed the resolution.
- 46.2 For the purposes of this rule 46, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is substantially identical in each copy.
- 46.3 A reference in this rule to all the Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.
- 46.4 Every resolution passed under this rule will as soon as practicable be entered in the minutes of the Directors' meetings.
- 46.5 Any document referred to in this rule may be in the form of a facsimile or electronic transmission.
- 46.6 A communication by any technological means addressed to or received by the Company and purporting to be signed by a Director for the purpose of this Constitution is deemed to be a document in writing signed by that Director.
- 46.7 The minutes of Directors' meetings must record that a meeting was held in accordance with this rule 46.

## 47. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director; or
- (b) any of the circumstances specified in rule 32 applied to a person appointed as a Director,

all acts of the Directors before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## 48. Minutes and Registers

- 48.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of Committees;

- (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Committees;
  - (c) all resolutions passed by Directors in accordance with rule 46;
  - (d) all appointments of officers (as that term is defined in the Corporations Act);
  - (e) all orders made by the Directors and Committees; and
  - (f) all disclosures of interests and conflicts of interest made under rule 41.
- 48.2 Minutes must be signed by the Chair of the meeting or by the Chair of the next meeting of the relevant body.
- 48.3 The Company must keep all registers required by this Constitution and the Corporations Act.
- 48.4 Without limiting rule 48.3, the Company must ensure that the Register contains the following information:
- (a) the name, address and other contact details of each Member;
  - (b) the membership class of each Member;
  - (c) the date on which each Member was admitted;
  - (d) the membership fees paid and payable by the Member (if any); and
  - (e) the date the Member ceases to be a Member.

## Management

### 49. Appointment of attorneys and agents

- 49.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:
- (a) for the purposes;
  - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
  - (c) for the period; and
  - (d) subject to the conditions,  
determined by the Directors.
- 49.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any member of any local board established under this Constitution;
  - (b) any body corporate or person;
  - (c) the members, directors, nominees or managers of any company or firm; or
  - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 49.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.



- 49.4 The Directors may appoint attorneys or agents in writing to act for and on behalf of the Company.
- 49.5 An attorney or agent appointed under this rule 49 may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

## Chief Executive Officer

### 50. Chief Executive Officer

- 50.1 The Directors may appoint any person, including a Director, to the position of CEO for the period and on the terms (including as to remuneration) that the Directors see fit.

## Company Secretary

### 51. Company Secretary

There must be at least one company secretary of the Company, appointed by the Directors for a term and at remuneration and on conditions determined by them.

## Financials

### 52. Financial year

The financial year of the Company will end on 30 June in each calendar year.

### 53. Audit

- 53.1 A registered company auditor will be appointed in accordance with the Corporations Act and the ACNC Act.
- 53.2 The remuneration of the auditor will be fixed, and the auditor's duties regulated in accordance with the Corporations Act.

## Inspection of records

### 54. Inspection of records

- 54.1 Except as otherwise required by the Corporations Act or this Constitution, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.

- 54.2 Except as otherwise required by the Corporations Act, or this Constitution, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

## Notices

### 55. Service of notices

A notice may be given by the Company to any Member either by serving it on the Member personally or by sending it by post or electronic transmission to the Member at the address shown in the Register or the address or other such contact details (such as email address) supplied by the Member to the Company for the giving of notices.

### 56. Method of service

56.1 Service of a notice under this Constitution is taken to be effected:

- (a) if hand delivered - on delivery;
- (b) if sent by prepaid post - on the fifth Business Day after the date of posting; or
- (c) if sent by facsimile - when the sender's facsimile system generates a message confirming successful transmission of the entire notice, but if the delivery, receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day, the notice is taken to be given at 9.00 am on the next Business Day; or
- (d) if sent by any form of electronic communication, then in accordance with the *Electronic Transactions Act 1999 (Cth)* - at the time when the electronic communication becomes capable of being retrieved by the addressee at an electronic address designated by the addressee whether the notice has been read or not.

### 57. Persons entitled to notice of general meeting

57.1 Notice of every general meeting will be given in the manner authorised by rules 55 and 56 to:

- (a) every Member or person entitled to receive notice in accordance with this Constitution and the Corporations Act; and
- (b) the auditor for the time being of the Company.

57.2 Persons who are not Members may be invited to attend general meetings but are not entitled to receive notices of general meetings.

## Public Fund and other gift funds

### 58. Requirements of the Public Fund

The Company must inform the Department responsible for the environment as soon as possible if:

- (a) the Company changes its name or the name of the Public Fund;
- (b) there is any change to the membership of the management committee of the Public Fund; or
- (c) there has been any departure from the model rules for the Public Fund located in the Guidelines to the Register of Environmental Organisations.

## 59. Operation of the Public Fund

- 59.1 The objective of the Public Fund is to support the Company's environmental purposes.
- 59.2 Members of the public will be invited to make gifts of money or property to the Public Fund for the environmental purposes of the Company.
- 59.3 Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Public Fund.
- 59.4 A separate bank account is to be opened to deposit money donated to the Public Fund, including interest accruing thereon, and gifts to it are to be kept separate from other funds of the Company.
- 59.5 Receipts are to be issued in the name of the Public Fund and proper accounting records and procedures are to be kept and used for the Public Fund.
- 59.6 The Public Fund will be operated on a not-for-profit basis.
- 59.7 A committee of management (**Fund Management Committee**) of no less than three persons will administer the Public Fund. The Fund Management Committee will be appointed by the Board and will be comprised of a majority of members who are 'responsible persons' as defined by the Guidelines to the Register of Environmental Organisations and have submitted a Public Fund Management Committee Member Nomination Form to the Board.

## 60. Ministerial Rules

The Company agrees to comply with any rules that the Federal Treasurer and the Federal Minister with responsibility for the environment may make to ensure that gifts made to the Public Fund are only used for its principal purpose.

## 61. Winding up of the Public Fund

In case of the winding-up of the Public Fund, any surplus assets are to be transferred to another fund with similar objectives that is on the Register of Environmental Organisations.

## 62. Statistical information

Statistical information requested by the relevant Federal Department of Environment on donations to the Public Fund will be provided within four months of the end of the financial year.

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

## 63. Transfer of the gift funds in specified circumstances

Subject to rule 61, on:

- (a) revocation of the endorsement of the Company under sub-division 30-B of the ITAA; or
- (b) the winding up of any other gift fund by the Company,

any balance in the gift fund or an account set up by the Company to acknowledge tax deductible gifts made to it must be transferred to such other gift fund, gift funds, entity or entities having objects similar to the objects of the Company as will be determined by the Members at or before that time, provided that each recipient must be endorsed as a deductible gift recipient under sub-division 30-B of the ITAA.

## Changes to Constitution

### 64. Amending the Constitution

64.1 This Constitution may be altered from time to time providing any alterations are approved as a special majority resolution being a decision of at least seventy-five per cent (75%) of Members present and entitled to vote either in person or by proxy at a validly constituted meeting.

64.2 Subject to this Constitution, the Company may revoke, add to or vary these rules provided that:

- (a) no part of the Public Fund or the income of the Public Fund becomes subject to any institution, organisation, fund or authority that is not a charitable organisation endorsed to receive donations under sub-division 30-B of the ITAA; and
- (b) the Commissioner of Taxation consents to the revocation, addition or variation:
  - (i) no amendment is allowed to be made to or affecting the objects of the Company; and
  - (ii) no amendment is allowed to be made which authorises the Company to invest money of a Public Fund other than in a manner which trustees are permitted to invest under the laws of Australia or any Australian State or Territory.

## Indemnity

### 65. Indemnity

65.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred by that person as such an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

65.2 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer

of the Company against reasonable legal costs incurred in defending an action for a liability incurred by that person as such an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

65.3 The amount of any indemnity payable under rules 65.1 or 65.2 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

65.4 For the purposes of this rule 65, **officer** means:

- (a) a Director; or
- (b) a Company Secretary.

# Schedule 1 – Transitional provisions

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The following transitional arrangements apply from the date of the Company's incorporation until the Company's 2023 annual general meeting:

## Membership

Any person or other entity who is a member of Nature Foundation prior to the incorporation of the Company is automatically admitted to membership of the Company.

## Rotation of Initial Directors

1. Notwithstanding rule 27, the number of Directors on incorporation of the Company will be eleven (11).
2. The Initial Directors will remain in office until the Company's 2020 annual general meeting (**2020 AGM**), at which time:
  - (a) either by natural attrition or resignation five (5) of the Initial Directors must resign from the Board; and
  - (b) three (3) new Directors will be appointed in accordance with rule 30.
3. The Initial Directors to resign at the 2020 AGM will be those persons who have been in office the longest. If two or more Initial Directors due to retire were appointed on the same day, they must agree between themselves or otherwise draw lots to determine which of them is to resign in compliance with paragraph 2 above.
4. Rule 31 will apply at and from the Company's 2021 annual general meeting, and the remaining transitional provisions set out in this Schedule will cease to apply following the end of that meeting.