



BUSH HERITAGE
AUSTRALIA

Bush Heritage Australia Constitution

Adopted by the Members at the Annual General Meeting held on 22nd August 2014.

A public company limited by guarantee not having a share capital incorporated under the Corporations Act 2001 (Cth)

Incorporated in Tasmania on 11 October 1991

ABN 78 053 639 115

ACN 053 639 115

Level 1, 395 Collins Street, Melbourne, Victoria, 3000

PO Box 329 Flinders Lane, Melbourne Victoria, 8009

Telephone: 03 8610 9100

Fax: 03 8610 9199

Email: info@bushheritage.org.au

Website: www.bushheritage.org.au

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GENERAL

1 Definitions

In this Constitution unless the context requires otherwise:

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

Act means the Corporations Act 2001 (Cth);

Board means the board of Directors, consisting of all or a number of the Directors for the time being (not being less than a quorum) convened in accordance with this Constitution;

Chair means the chair of a general meeting or Board meeting;

Company means Bush Heritage Australia ACN 053 639 115;

Company Regulator means a government authority which regulates the Company, and includes the Australian Securities and Investments Commission and the Australian Charities and Not-for-profits Commission;

Company Secretary means a person appointed to the office of company secretary pursuant to Section 53;

Constitution means the constitution of the Company, incorporating the Public Fund Rules, as amended from time to time;

Director means a person holding office as director of the Company in accordance with this Constitution;

Environment Department has the meaning given in the Tax Act, which is presently the Commonwealth Department of the Environment;

Licence means the licence issued to the Company dated 4 August 1993 in force by virtue of section 151 of the Act;

Member means a person admitted to membership of the Company according to the Company register;

Member Present means, in connection with a general meeting, a Member present in person or by proxy or attorney;

Office Bearer means an office bearer pursuant to Section 42 whether or not he or she may also be an Officer;

Officer has the meaning given in section 9 of the Act whether or not he or she may also be an Office Bearer;

President means the Office Bearer by that name pursuant to Section 42;

Public Fund means the fund referred to in, and established in accordance with, the Public Fund Rules;

Public Fund Rules means the rules attached to and forming part of this Constitution;

Section means a section of this Constitution;

Tax Act means the Income Tax Assessment Act 1997 (Cth); and

Vice President means the Office Bearer by that name pursuant to Section 42.

2 Interpretation

The following rules of interpretation apply unless the context requires otherwise.

- (a) A gender includes all genders.
- (b) The singular includes the plural and conversely.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) Headings are for convenience only and do not affect interpretation.
- (e) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (f) This Constitution is to be interpreted subject to the Act, and so as not to exceed the powers under which it was made.
- (g) Where but for Section 2(f) and this Section 2(g) this Constitution would have been interpreted as exceeding the powers under which it was made, it is nevertheless to be valid to the extent that it does not exceed those powers.
- (h) The Public Fund Rules form part of this Constitution.
- (i) An expression has, in a provision of this Constitution which relates to a particular provision of the Act, the same meaning as in that provision of the Act.
- (j) A reference to a person shall include any natural person, body corporate, partnership, association, co-operative society or statutory body.
- (k) A reference to a government department, authority or entity (the **original entity**) that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity.

3 Replaceable rules

The replaceable rules contained in the Act do not apply to the Company.

4 Actions authorised under the Act

- 4.1 Subject to the Licence, where the Act authorises or permits a company to do any matter or thing if so authorised by its constitution, the Company is and shall be taken by this Section 4 to be authorised or permitted to do that matter or thing, despite any other provisions of this Constitution.

- 4.2 Without limiting Section 4.1 but subject to the Licence, the Company shall have the powers set out in section 124 of the Act which may be exercised in any manner which is necessary for or incidental to the promotion of the principal objects set out in Section 5.1.

OBJECTS

5 Objects

5.1 Principal objects

The Company's principal objects are:

- (a) to protect and enhance the natural environment, or significant parts of it, for the long term by acquiring and preserving interests in or associated with land or water (**interests**) which are of high conservation value or environmental significance as determined by the Board;
- (b) to preserve, restore or maintain the conservation value or environmental significance of the natural environment through the planned management of the Company's property and interests;
- (c) to obtain funds or other property through donations, bequests, public appeals, special events and sponsorships;
- (d) to work with, provide assistance to, or engage others to protect and enhance the natural environment;
- (e) to advise and educate others about how to protect and enhance the natural environment;
- (f) to dispose of any interests of the Company:
 - (i) because that interest is either not, or is found not to be, or is no longer, of high conservation value or environmental significance for whatever reason as determined by the Board; or
 - (ii) to raise funds to further the objects of the Company, provided that the Board has taken proper steps to ensure that, where legally possible and where practicable, the conservation value or environmental significance of the interests will be protected and preserved, whether by the use of restrictive covenants or similar instruments or otherwise or by disposing of such interests to an organisation with similar objects to the Company; or
 - (iii) to an organisation with similar objects to the Company which, in the opinion of the Board, is in a better position to conserve and protect the interests;
- (g) to buy or sell for the benefit of the Company any trading credits, sequestration rights or other similar property or interests in land, air, water or carbon;
- (h) to pursue strategic, operational, business and other appropriate relationships with the public and private sector to achieve the objects of the Company; and
- (i) to do anything incidental to the above.

5.2 Achievement of objects

In achieving the principal objects of the Company under Section 5.1 and if so required under the Tax Act or the Guidelines of the Environment Department and so as to ensure that donations to the Company have tax deductible status under the Tax Act:

- (a) the Company shall inform the Environment Department as soon as possible if it changes its name;
- (b) the Company shall comply with the Public Fund Rules;
- (c) any allocation of funds or property held in the Public Fund to other persons or organisations will be made in accordance with the principal objects of the Company and will not be influenced by the preference of the donor; and
- (d) an audited financial statement for the Company will be supplied to the Environment Department with the annual statistical return, which will provide information on the expenditure and management of the Public Fund.

5.3 Application of income and property

- (a) The income and property of the Company shall be applied solely towards the promotion of the principal objects of the Company set out in this Constitution. No portion of that income or property shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the Members.
- (b) Subject to Section 5.3(c), nothing contained in this Constitution shall prevent the payment in good faith by the Company:
 - (i) of reasonable and proper remuneration (whether by way of salary, wage, commission, bonus or otherwise) to any Member, Officer or servant of the Company for any services rendered to the Company;
 - (ii) to any Member for goods supplied to the Company by the Member at arm's length and in the ordinary course of business;
 - (iii) to any Member of interest at a reasonable and proper rate; or
 - (iv) of reasonable and proper rent for premises demised or let by any Member to the Company,and in each case where the Member is a Director, payment must be previously approved by the Board.
- (c) No Director shall be appointed to any salaried or remunerated office of the Company and no remuneration or other benefit may be paid or given to any Director except for:
 - (i) out-of-pocket expenses incurred by a Director in the performance of any duty as Director with the prior approval of the Board or where the amount payable does not exceed an amount previously approved by the Board;
 - (ii) moneys to any Director, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer where the provision of the service has the prior approval of the Board and where

the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;

- (iii) an insurance premium in respect of a contract insuring a Director for a liability incurred as an Officer of the Company where the Board has previously approved the payment of the premium; or
- (iv) any amount to a Director in respect of the indemnity given under Section 59 where such payment has been previously approved by the Board.

5.4 Entrenchment of objects provisions

The Company must make the notifications required by section 151 of the Act if it modifies Sections 5.1, 5.2 or 5.3.

LIABILITY

6 Liability

The liability of the Members is limited.

MEMBERSHIP

7 Membership

7.1 While the Company is on the Register of Environmental Organisations, to comply with section 30-275 of the Tax Act the number of Members will be at least 50. The number of Members may be limited above that number from time to time by the Board.

7.2 The Members shall consist of:

- (a) the subscribers to this Constitution; and
- (b) such persons admitted to membership in accordance with Section 8, until they cease to be a Member under Sections 11 to 14.

7.3 Membership of the Company is divided into the following classes:

- (a) ordinary membership; and
- (b) honorary life membership.

8 Application for membership

8.1 Application for ordinary membership

- (a) A person is eligible to apply for membership if he or she is a natural person over 18 years in age.

- (b) An applicant for ordinary membership shall be proposed by one Member and seconded by another Member.
- (c) The membership application shall be made in writing, signed by the applicant and the applicant's proposer and seconder, and shall be in the form prescribed by the Board.
- (d) At the next Board meeting as soon as practicable after receiving any membership application, the Board must consider it and either accept or reject it. The Board shall not be required to give any reason for its decision.
- (e) When an applicant has been accepted for membership the Company Secretary shall send the applicant a written acceptance notice and a request for payment of the entrance fee (if any, determined by the Board) and first annual membership fee.
- (f) Upon payment of his or her first annual membership fee, or if no payment is required then immediately, the applicant shall become a Member. If payment is not made within 2 calendar months after the date of the notice, the Board may in its discretion withdraw the acceptance notice and offer of membership.

8.2 Nomination of honorary life Members

- (a) A natural person may be nominated, with the nominee's agreement, as an honorary life Member, in recognition of long and distinguished service to the Company. The nomination must be made in writing, signed by no less than 5 Members and given to the Board. The nominee need not be an existing Member.
- (b) At the next Board meeting, as soon as practicable after receiving any nomination, the Board must consider it and either accept that it be put to the Members or reject it. The Board shall not be required to give any reason for its decision.
- (c) A nominee shall not be admitted as an honorary life Member if, at the time of the admission, the number of honorary life Members would exceed 10% of the total number of ordinary Members. The Board may hold the nomination for up to 5 years while this restriction applies.
- (d) If the Board accepts that the nomination should be put to the Members, this must be included in the next notice of general meeting.
- (e) If the Members resolve to admit the nominee as an honorary life Member then the person will immediately become an honorary life Member and be registered as such in the Company's register of Members.
- (f) Honorary life Members are not required to pay any entrance fee or annual membership fee. Honorary life Members otherwise have all the rights, obligations and entitlements of ordinary Members.

9 Annual membership fee

- 9.1 The Members (excluding honorary life Members) shall pay to the Company the annual membership fee determined by the Board from time to time. The Members (excluding honorary life Members) may by ordinary resolution disallow the annual membership fee set by the Board, in which case the annual membership fee reverts to the last undisputed amount plus an adjustment for CPI. The Board has the power to waive or amend the requirement for the payment of the annual membership fee for any Member.

- 9.2 All annual membership fees (if any) become due and payable in advance on 1 July each year.

10 Register of Members

The Company shall keep a register of its Members in which shall be entered:

- (a) the names and addresses of the Members;
- (b) the class of membership of each Member;
- (c) the date at which the name of a Member was entered in the register; and
- (d) the date on which any person ceased to be a Member.

CESSATION OF MEMBERSHIP

11 Resignation of a Member

A person may resign membership at any time by giving written notice to the Company Secretary. The resignation takes effect when the Company Secretary receives the resignation notice or at a later date specified in that notice. The Company Secretary must accordingly update the register of Members.

12 Non-payment of annual membership fee

- 12.1 If the annual membership fee of a Member (other than an honorary life Member) remains unpaid for a period of 2 calendar months after it becomes due, the Company Secretary shall give notice to the Member of that fact, and shall request that payment be made by the date specified in the notice, which shall be no less than 14 days.
- 12.2 If payment is not received by the deadline set under Section 12.1 the Board may terminate the person's membership and accordingly update the register of Members.
- 12.3 The Board may, if it thinks fit, subject to payment of all arrears, reinstate the Member and restore the person's name to the register of Members.

13 Misconduct of a Member

- 13.1 If any Member:
- (a) is in breach of or wilfully refuses or neglects to comply with this Constitution or the Company's by-laws, regulations, policies or other documents made under this Constitution; or
 - (b) is guilty of any act or omission which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the interests of the Company,

the Board may resolve to censure, suspend or expel (**discipline**) the Member in accordance with this Section 13.

- 13.2 Before the Board makes any resolution to discipline a Member, it must give the Member:

- (a) at least 7 days' written notice setting out the date, time and place at which the question of discipline of that Member shall be considered by the Board and the nature of the alleged misconduct; and
 - (b) the right to make submissions, in either written or verbal form, to the Board in respect of the alleged misconduct.
- 13.3 The Company Secretary shall promptly give notice of any Board resolution regarding the question of discipline to the Member concerned. If the Board resolved to discipline the Member, the notice must explain that the Member has the right, exercisable by notifying the Company Secretary within 14 days after receipt of the notice (the **Notice Period**), to appeal the matter. Upon receipt of such notice of appeal, the Company Secretary shall cause, within 3 months of the receipt of the notice, an appeal meeting to be held to determine the outcome of the appeal and the discipline does not take effect until the appeal is complete. If the Member does not exercise that right, the discipline takes effect upon the expiry of the Notice Period.
- 13.4 The appeal will be heard by the Company's appeals committee which will have an independent chair nominated by the President of the Law Council of Australia or his or her nominee. At any appeal meeting convened under Section 13.3, the Member and the Board shall be given a reasonable opportunity to present their respective cases.
- 13.5 The outcome of the appeal shall be determined by a resolution of the appeals committee. If a resolution to discipline the Member is passed at the meeting by a majority of two-thirds of the appeals committee members, that Member shall, as the case may be, be so disciplined or cease to be a Member and the register of Members updated accordingly.

14 Other grounds for cessation of membership

A person's membership shall automatically cease on the date that he or she:

- (a) dies;
- (b) becomes of an unsound mind or a person whose estate is liable to be dealt with in any way under the laws relating to mental health;
- (c) becomes bankrupt; or
- (d) is convicted of an indictable offence.

15 Member's liability following cessation of membership

Any person whose membership ceases in accordance with this Constitution shall remain liable for:

- (a) any annual membership fee which has become due and payable and which remains unpaid at the date of resignation or termination of membership;
- (b) any sum not exceeding \$10 for which that Member is liable to pay under Section 60.2; and
- (c) all other monies due by that Member to the Company,

and shall not be entitled to any full or partial refund of any annual membership fee.

GENERAL MEETINGS

16 Power of Directors to convene

- 16.1 Any two Directors may convene a general meeting whenever those Directors think fit.
- 16.2 The Directors who convene a general meeting under Section 16.1 may cancel that meeting by notice in writing to all Members.
- 16.3 The Board may, other than in respect of a general meeting requisitioned in accordance with the Act, postpone a general meeting or change the place at which it is to be held. Notice of the postponed general meeting will be given in accordance with Section 18.3.

17 Annual general meetings and special general meetings

An annual general meeting of the Company shall be held in accordance with the Act and the ACNC Act. All general meetings other than the annual general meeting shall be called special general meetings.

18 Notice of general meetings

- 18.1 Each notice convening a general meeting shall contain the information required by law.
- 18.2 The proceedings at or any resolution passed at a general meeting is not invalidated by a person entitled to receive notice:
- (a) accidentally not being given notice; or
 - (b) not receiving that notice.
- 18.3 If a meeting is postponed pursuant to Section 16.3, notice must be given not later than 72 hours before the time of the meeting to all persons to whom the notice of meeting (the **first notice**) was given. The postponing notice must specify the new place, date and time of the meeting. The meeting at the postponed time is taken to be duly convened under the first notice.

19 Business of general meetings

Unless all of the Members, whether or not present, unanimously agree otherwise, no business shall be transacted at any general meeting except as set out in the notice of meeting.

20 Quorum

- 20.1 No business shall be transacted at any general meeting unless a quorum of Members is present throughout the meeting.
- 20.2 Except as otherwise provided in this Constitution, six Members Present constitute a quorum.

21 If quorum not present

If a quorum is not present within 30 minutes of the general meeting's appointed time:

- (a) where the meeting is convened on the requisition of Members, it is dissolved;
- (b) in any other case:
 - (i) the meeting stands adjourned to a day and at a time and place as the Board decides or, if no decision is made by the Board, to the same day in the next week at the same time and place; and
 - (ii) if at the adjourned meeting a quorum is not present within 30 minutes of the appointed time, the meeting is dissolved.

22 Chair of general meetings

The Chair of a general meeting will be:

- (a) the President;
- (b) in the absence of the President being willing and able to chair – the Vice President;
- (c) in the absence of the President and Vice President being willing and able to chair – one of the Directors elected from their number; or
- (d) in the absence of any Directors being willing and able to chair – one of the Members elected from their number.

23 Adjournments

- 23.1 The Chair of a general meeting may and must if so directed by resolution of the Members Present adjourn the meeting from time to time and from place to place.
- 23.2 No business shall be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 23.3 It is not necessary to give any notice of an adjournment of a general meeting, except that the Board may give notice if it considers it necessary.

24 Voting at general meetings

- 24.1 Any resolution to be considered at a general meeting shall be decided on a show of hands unless a poll is demanded by the President, 5 Members or 5% of Members.
- 24.2 A declaration by the Chair of the general meeting that a resolution has on a show of hands been carried (by a particular majority) or lost and an entry to that effect in the minutes of the meeting shall be taken as conclusive evidence of the fact without the need to show the number or proportion of the votes recorded in favour of or against the resolution.

- 24.3 A Member shall not be entitled to attend, speak or vote at any general meeting unless all sums presently payable by that Member in respect of her or his membership have been paid.

25 Procedure for polls

- 25.1 A poll when demanded under Section 24.1:
- (a) on the election of a Chair or on a resolution of adjournment shall be taken immediately; and
 - (b) otherwise shall be taken in the manner and at the time the Chair directs and the demand for a poll shall not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded.
- 25.2 The result of the poll shall be a resolution of the general meeting at which the poll was demanded.

26 Casting vote

In the case of an equality of votes on a show of hands or on a poll the Chair of the general meeting has a casting vote in addition to any vote to which the Chair may be entitled as a Member.

27 Representation and voting of Members

Subject to this Constitution:

- (a) at meetings of Members, each Member entitled to attend and vote may attend and vote in person, by proxy or by attorney;
- (b) on a show of hands, every Member personally present having the right to vote at the meeting has one vote; and
- (c) on a poll, every Member Present having the right to vote at the meeting has one vote.

28 Objections to qualification to vote

- 28.1 An objection to the qualification of a person to vote may be raised only at the meeting or adjourned meeting at which the vote objected to is tendered.
- 28.2 Any objection shall be referred to the Chair of the general meeting, whose decision shall be final.

29 Appointment of proxy

A Member may appoint one proxy who need not be a Member.

30 Proxy documents

- 30.1 An instrument appointing a proxy must be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing.
- 30.2 A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- 30.3 An instrument appointing a proxy may be in any form that the Board may accept or stipulate and which complies with section 250A of the Act.

31 Lodgement of proxies etc

- 31.1 For an instrument appointing a proxy, an attorney or a representative to attend and vote at a general meeting of the Company (or at all general meetings for a specified period) to be effective the following documents must be received by the Company not less than 48 hours (or any shorter period as the Board may permit) before the commencement of the meeting or adjourned meeting at which the instrument is to be used or the power is to be exercised:
- (a) the proxy's appointment;
 - (b) if the appointment is signed, or otherwise authenticated in a manner prescribed by regulations made for the purposes of section 250A(1) of the Act, by the appointor's attorney — the authority under which the appointment was signed or authenticated or a certified copy of the authority.
- 31.2 For the purposes of Section 31.1, the Company receives these documents when they are received at any of the following:
- (a) the Company's registered office;
 - (b) a fax number at the Company's registered office; or
 - (c) a place or fax number or email specified for the purpose in the notice of meeting.

32 Validity of proxies

- 32.1 A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:
- (a) death or unsoundness of mind of the appointor; or
 - (b) the revocation of the instrument (or of the authority under which the instrument was executed) or the power,
- if no notice in writing of the death, unsoundness of mind or revocation has been received by the Company at its registered office not less than 48 hours (or any shorter period as the Board may permit) before the commencement of the meeting, or adjourned meeting at which the instrument is used or the power is exercised.
- 32.2 A proxy is not revoked by the appointor attending and taking part in the meeting. However, during that time the proxy's power to speak and vote is suspended.

33 Where proxy is incomplete

- 33.1 No instrument appointing a proxy is treated as invalid merely because it does not contain:
- (a) the address of the appointor or of a proxy;
 - (b) the proxy's name or the name of the office held by the proxy; or
 - (c) in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.
- 33.2 Where the instrument does not specify the name of a proxy, the instrument is taken to be given in favour of the Chair of the general meeting.

34 Right of Officers and advisers to attend general meeting

- 34.1 A Company Secretary who is not a Member is entitled to be present and, at the request of the President or the Chair, to speak at any general meeting.
- 34.2 Any other person (whether a Member or not) requested by the Board to attend any general meeting is entitled to be present and, at the request of the President or the Chair, to speak at that general meeting.

ELECTION, APPOINTMENT AND REMOVAL OF DIRECTORS

35 Number of Directors

- 35.1 The Company shall have not less than five nor more than ten Directors all of whom must be natural persons, and:
- (a) one will be reserved for and can only be filled, at the option of the Board, by an appointed Director;
 - (b) no more than two will be appointed Directors; and
 - (c) the balance will be elected Directors.
- 35.2 The Company may from time to time by resolution of a two thirds majority of Members Present passed at a general meeting increase or reduce the allowable number of Directors.

36 Election and appointment of Directors

Elected Directors

- 36.1 No person shall be eligible for election as a Director unless that person is a Member and is not precluded from being elected by Section 37.
- 36.2 Each Director elected by the Members will serve for a term of 3 years (between annual general meetings) commencing at the end of the annual general meeting at which they were declared elected and concluding at the end of the third annual general meeting after that commencement. Subject to Section 37, a Director is eligible to be nominated for re-election at the annual general meeting at which their term of office concludes.

- 36.3 The election of the Directors shall take place at the annual general meeting and in the following manner:
- (a) Nominations for Directors shall be in writing signed on behalf of two Members entitled to vote at such an election and shall bear the candidate's consent endorsed on the document. Such nomination shall be lodged with the Company Secretary at least 14 days before the annual general meeting at which the election is to take place.
 - (b) A list of the candidates' names, in alphabetical order, with the proposer's and seconder's names, shall be posted in a conspicuous place in the registered office of the Company for at least 7 days immediately preceding the general meeting.
 - (c) If the number of candidates exceeds the number of vacancies, balloting lists shall be prepared and distributed at the annual general meeting, containing the names of the candidates only in alphabetical order, and each Member Present at the annual general meeting shall be entitled to vote for any number of such candidates not exceeding the number of vacancies. Otherwise the candidates must be declared elected.
 - (d) The result of the election will be declared at the annual general meeting.
 - (e) If the election does not result in the number of Directors meeting the requirements of Section 35, then a casual vacancy or vacancies are deemed to exist and Sections 36.7 to 36.10 will apply to the extent necessary for the number of Directors to comply with Section 35.

Appointed Directors

- 36.4 A person shall be eligible for appointment as a Director under Section 36.5 so long as the person is a Member and is not precluded from being appointed by Section 37.
- 36.5 The Board shall have power at any time and from time to time to appoint any Members to be appointed Directors up to the number of unfilled appointed Director positions specified in Section 35.1.
- 36.6 Directors appointed in accordance with Section 36.5 shall be appointed for a term of up to 3 years (as determined by the Board at the time of making the appointment) from the date of appointment, provided that any term of appointment must not result in the Director serving greater than 9 years continuously.

Casual vacancies

- 36.7 A casual vacancy arises upon the vacation of office by an elected Director before the conclusion of the Director's full term of office under Section 36.2. A casual vacancy does not arise upon the vacation of office by an appointed Director before the conclusion of the Director's term of appointment under Section 36.6.
- 36.8 No person shall be eligible for appointment as a Director to fill a casual vacancy unless that person is a Member, and is not precluded from being appointed by Section 37.
- 36.9 Subject to Section 36.10, the Board shall have power at any time and from time to time up to the beginning of the next annual general meeting after a casual vacancy arises to appoint any Member as a Director to fill a casual vacancy. The person so appointed is deemed to be an elected Director for the purposes of Section 35.1 and holds office until the beginning of the next annual general meeting after their appointment.

- 36.10 If a casual vacancy results in a lower number of Directors than the allowable minimum under Section 35.1 then the Board must exercise its power under Section 36.9 as soon as practical.

Transitional arrangements

- 36.11 Each Director declared elected at or before the 2014 annual general meeting will be an elected Director for the purposes of this Section 36.

37 Limit on continuous period of office as a Director

If a Director has served 9 years or more continuously then the Director may finish serving his or her current term of office but does not become eligible to be elected or appointed (whether or not to a casual vacancy) until he or she has not been a Director for a subsequent continuous period of 3 years.

38 Removal of Directors by Members

- 38.1 The Company may in accordance with the Act remove any Director before the expiration of that Director's term of office.
- 38.2 A Director removed by the Members under Section 38.1 is thereafter ineligible to take office as an appointed Director or to fill a casual vacancy for 3 years from the date of removal, unless he or she is subsequently elected pursuant to Sections 36.1 to 36.3.

39 Vacation of office

The office of a Director shall become vacant upon the conclusion of their term of office under Section 36.2 or 36.6, 36.9 or 38.1 or if the Director:

- (a) ceases to be a Member;
- (b) ceases to be a Director by virtue of the Act or the ACNC Act;
- (c) is prohibited from being a Director of a company under the Act or the ACNC Act;
- (d) resigns her or his office by notice in writing given to the Company;
- (e) becomes bankrupt or makes any arrangement or composition with their creditors generally or becomes of unsound mind or a person whose estate is liable to be dealt with under the law relating to mental health;
- (f) holds any office of profit under the Company; or
- (g) dies.

POWERS AND DUTIES OF BOARD

40 Powers of Board

- 40.1 Subject to the Act and this Constitution, the business of the Company is managed by the Board, which may exercise all powers of the Company which are not, by the Act or this Constitution, required to be exercised by the Company in general meeting.

- 40.2 Without limiting the generality of Section 40.1, the Board may exercise all the powers of the Company:
- (a) to borrow money, to charge any property or business of the Company (and to repay such money or seek the discharge of such charges);
 - (b) to issue debentures or give any other security for a debt, liability or obligation of the Company; and
 - (c) to exercise any powers of the Company to the extent incorporated into the Company's principal objects in Section 5.1.

41 Appointment of attorneys

- 41.1 The Board may, by power of attorney, appoint any person to be the attorney of the Company for the purposes, with the powers, authorities and discretions vested in or exercisable by the Board for any period and subject to any conditions as it thinks fit.
- 41.2 Any appointment under Section 41.1 may be made on terms for the protection and convenience of persons dealing with the attorney as the Board thinks fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

42 Office Bearers

- 42.1 The Board shall elect from time to time a President and a Vice President from the Directors and may elect a replacement of any of them from time to time.
- 42.2 The Board may create or remove additional Office Bearer roles and may elect from the Directors from time to time a person to occupy such additional roles and may elect a replacement of any of them from time to time.

43 Negotiable instruments

All negotiable instruments of the Company and all receipts for money paid to the Company shall be executed by:

- (a) any two Directors; or
- (b) a Director and Company Secretary; or
- (c) in such manner as the Board may decide from time to time.

44 Accounts

- 44.1 The Board shall ensure that:
- (a) proper accounts are kept with respect to all sums of money received and expended by the Company and the matter in respect of which the receipt and expenditure takes place and the assets and liabilities of the Company; and
 - (b) audited financial accounts are prepared which comply with the Act and any other enactment, section or regulation to which the Company may from time to time be subject.

- 44.2 The financial year of the Company begins on 1 April each calendar year and ends on 31 March of the subsequent calendar year, unless some other financial year is approved by the relevant government authority.
- 44.3 The accounts shall be kept at the office of the Company or at such other place or places as the Board thinks fit and shall always be open to inspection by any Director.
- 44.4 The Board shall from time to time determine at what times and places, under what conditions or regulations the accounting and other records of the Company shall be open to the inspection of Members.

PROCEEDINGS OF BOARD

45 Proceedings

- 45.1 The Board may meet for the dispatch of business and adjourn or otherwise regulate its meetings as it thinks fit.
- 45.2 The President may at any time, and the Company Secretary shall on the request of two Directors, convene a Board meeting.
- 45.3 Reasonable notice must be given to every Director of the place, date and time of every Board meeting. Where any Director is for the time being outside of Australia, notice need only be given to that Director if contact details outside of Australia have been given.

46 Meetings by technology

- 46.1 Subject to the Act, each Director consents to the use of the following technology for calling or holding a Board meeting:
- (a) video;
 - (b) telephone;
 - (c) email;
 - (d) any other technology or technologies which permits each Director to communicate with every other Director.
- 46.2 Where the Directors are not all in attendance at one place and are holding a meeting using technology in accordance with Section 46.1:
- (a) the participating Directors shall, for the purpose of every provision of this Constitution concerning meetings of the Board, be taken to be assembled together at a meeting and to be present at that meeting at the location where the Chair determines; and
 - (b) all proceedings of the Board conducted in that manner shall be as valid and effective as if conducted at a meeting at which all of those Directors were present.

47 Quorum at meetings

- 47.1 At a Board meeting, a quorum is constituted by four Directors entitled to vote.
- 47.2 Where a quorum is not present at a Board meeting, the individual Directors may outside of the meeting discuss any matter and may resolve among themselves to put a recommendation for the Directors to consider at the next Board meeting.

48 Chair of Board meeting

The Chair of a Board meeting will be:

- (a) the President;
- (b) in the absence of the President being willing and able to chair — the Vice President; or
- (c) in the absence of the President and Vice President being willing and able to chair — one of the Directors elected from their number.

49 Proceedings at Board meetings

- 49.1 Unless this Constitution requires a greater majority, any matter at any Board meeting shall be decided by a majority of votes of the Directors present and entitled to vote and any such decision shall for all purposes be deemed a decision of the Board.
- 49.2 In the case of an equality of votes, the Chair has a casting vote in addition to the Chair's deliberative vote.
- 49.3 The Board shall cause minutes of the resolutions and proceedings of each Board meeting to be kept in a minute book. The minutes shall be signed by the Chair of the meeting at which the proceedings took place, or the Chair of the next succeeding meeting.
- 49.4 Where minutes have been entered and signed in accordance with Section 49.3 then, unless the contrary is proved:
- (a) the meeting shall be deemed to have been duly convened and held;
 - (b) all proceedings that are recorded in the minutes as having taken place at the meeting shall be deemed to have duly taken place; and
 - (c) all appointments of Officers that are recorded in the minutes as having been made at the meeting shall be deemed to have been validly made.

50 Written resolutions

- 50.1 If a document:
- (a) is sent to all Directors entitled to receive notice of a meeting at which a resolution could be put;
 - (b) contains a statement that the signatories to it are in favour of that resolution;
 - (c) the terms of the resolution are set out or identified in the document; and

- (d) has been agreed to in writing by at least 75% of the Directors entitled to vote on that resolution,

a resolution in those terms is passed at the time at which the document was signed by the required majority of the Directors and the document has effect as a minute of the resolution.

- 50.2 For the purposes of Section 50.1, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be taken to constitute one such document.

51 Delegation and committees

- 51.1 Subject to the Act and this Constitution, the Board may delegate any of its powers.
- 51.2 The Board may establish committees, which may be delegated power by the Board or given power only to advise the Board. The committee will comprise such Directors, Members or other persons as the Board thinks fit.
- 51.3 A committee formed under this Section 51 must conform to any committee charter approved by the Board and any other directions given by the Board.
- 51.4 Subject to Section 51.3, Sections 45, 46, 47, 48, 49 and 50 apply to any committee established by the Board as if each reference in those sections to the Board was a reference to the members of the committee and each reference to a Board meeting was to a committee meeting.
- 51.5 Subject to Section 51.3, the number of committee members whose presence at a meeting of the committee is necessary to constitute a quorum is the number determined by the Board and, if not so determined, is two. Subject to Section 51.3, the quorum needs to be present only at the time when the meeting proceeds to business.

52 Material personal interests

- 52.1 Subject always to Section 5, a Director is not disqualified by that office from contracting with the Company or its related bodies corporate in any capacity by reason of holding of the office of Director.
- 52.2 In relation to a contract or arrangement in which a Director is in any way interested:
- (a) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
 - (b) a contract or arrangement, whether made by the Company or any related body corporate, may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
 - (c) the Director will not be liable to account to the Company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.
- 52.3 Subject to Section 52.4, a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of his or her interest.

- 52.4 A Director with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:
- (a) if all of the following conditions are met:
 - (i) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
 - (ii) if a person who was not a Director at the time the notice in Section 52.4(a)(i) was given is subsequently appointed as a Director, the notice is given to that person; and
 - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice in Section 52.4(a)(i);
 - (b) if the Director has given a standing notice of the nature and extent of the interest in accordance with the Act and that standing notice is still effective in relation to the interest; or
 - (c) as otherwise permitted under the Act.
- 52.5 Notices of material personal interest given by Directors must:
- (a) give details of the nature and extent of the Director's interest and the relation of the interest to the affairs of the Company;
 - (b) be given at a Board meeting as soon as practicable after the Director becomes aware of his or her interest in the matter; and
 - (c) be recorded in the minutes of the Board meeting at which the notice is given.
- 52.6 A Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting or vote on the matter, except in the following circumstances:
- (a) if the material personal interest is a matter that is not required to be disclosed under this Section 52 or under the Act; or
 - (b) if the Directors who do not have a material personal interest in the matter have passed a resolution that:
 - (i) identified the Director, the nature and the extent of the Director's interest in the matter and its relation to the affairs of the Company; and
 - (ii) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present; or
 - (c) as otherwise permitted under the Act.
- 52.7 Nothing in this Section 52 affects the duty of a Director:
- (a) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Directors' duties or interests as a Director, to declare at a meeting of Board, the fact and the nature, character and extent of the conflict; or
 - (b) to comply with the Act or the law.

OFFICERS

53 Company Secretary

- 53.1 The Board may appoint a Company Secretary upon such terms and conditions as to remuneration and otherwise as it thinks fit. The Company Secretary may be a Director, the Chief Executive or another person.
- 53.2 Subject to the terms of any contract, the Board may terminate the appointment of a Company Secretary at any time.

54 Other Officers

The Board may from time to time:

- (a) create any other Officer position in the Company with such powers and responsibilities as the Board may from time to time confer;
- (b) may appoint any person, whether or not a Member or Director subject always to Section 5, to any such Officer position or positions; and
- (c) the Board may at any time terminate the appointment of a person holding such a position and may abolish the position.

SEALS

55 Seals and their use

- 55.1 The Company may have a common seal. If the Company has a common seal it may also have a duplicate common seal.
- 55.2 A common seal may be used only by the authority of the Board, or of a committee of the Board authorised by the Board to authorise the use of the common seal. Every document to which the common seal is affixed shall be signed by:
- (a) two Directors;
 - (b) a Director and a Company Secretary; or
 - (c) another person or persons appointed by the Board to sign that document or a class of documents in which that document is included.
- 55.3 This Section 55 does not limit the ways in which the Company may execute a document.

INSPECTION OF RECORDS

56 Inspection of records

- 56.1 The Board may authorise a Member to inspect books of the Company to the extent, at the time and places and under the conditions, the Board considers appropriate or as prescribed by the Board.

- 56.2 A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or Section 56.1.

NOTICES

57 Notices generally

- 57.1 A Member who does not supply a current postal, fax or email address is not entitled to receive any notices from the Company.
- 57.2 A notice may be given by the Company to any Member by:
- (a) serving it on the Member personally;
 - (b) sending it by post to the Member or leaving it at the Member's address for receiving notices;
 - (c) fax to the fax number supplied by the Member to the Company for the receiving of notices; or
 - (d) transmitting it electronically to the email address given by the Member to the Company for receiving notices.
- 57.3 A Member may, by written notice to the Company Secretary, require that all notices to be given by the Company or the Board be served on the Member's attorney or representative at an address specified in the notice.
- 57.4 Notice to a Member whose address for notices is outside Australia shall be sent by airmail, fax or email.
- 57.5 Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected:
- (a) in the case of a notice of a meeting, on the day after the date of its posting; and
 - (b) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- 57.6 Where a notice is sent by fax or electronic transmission, service of the notice is taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the day it is sent.

58 Receipt of general meeting notices

Notice of every general meeting must be given:

- (a) to every Member and to each Director; and
- (b) to the auditor of the Company.

No other person is entitled to receive notice of general meetings.

INDEMNITY

59 Indemnity

- 59.1 To the extent permitted by law and without limiting the powers of the Company, the Company must indemnify each person who is, or has been, a Director, Company Secretary, or Officer against any liability which results directly or indirectly from facts or circumstances occurring on or after 13 March 2000 relating to the person serving or having served in that capacity other than for:
- (a) a liability (which is not legal costs):
 - (i) owed to the Company or a related body corporate;
 - (ii) for a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Act; or
 - (iii) that is owed to someone (other than the Company or a related body corporate) and did not arise out of conduct in good faith;
 - (b) legal costs incurred in defending an action for liability if the costs are incurred:
 - (i) in defending or resisting civil proceedings in which the person is found to have a liability for which they could not be indemnified under Section 59.1(a); or
 - (ii) in defending or resisting criminal proceedings in which the person is found guilty; or
 - (iii) in defending or resisting proceedings brought by a Company Regulator or a liquidator for a court order if the grounds for making the order are found by the Court to be established, but excluding costs incurred in responding to actions brought by a Company Regulator or a liquidator as part of an investigation before commencing proceedings for the court order; or
 - (iv) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.
- 59.2 To the extent permitted by law and without limiting the powers of the Company, the Board may authorise the Company to, and the Company may enter into any:
- (a) documentary indemnity in favour of; or
 - (b) insurance policy for the benefit of,
- a person who is, or has been, a Director, the Company Secretary, auditor, employee or other Officer of the Company or of a subsidiary of the Company, which indemnity or insurance policy may be in such terms as the Board approves and, in particular, may apply to acts or omissions before or after the time of entering into the indemnity or the policy.
- 59.3 The benefit of each indemnity given in Section 59.1 or any previous provision of this Constitution continues, even after its terms or the terms of this Section 59 are modified or deleted, in respect of a liability arising out of acts or omissions occurring before the modifications or deletion.

WINDING UP

60 Winding up

60.1 Distribution of surplus assets

If upon the winding-up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property, such property shall not be paid to or distributed among the Members, but shall be given or transferred to:

- (a) in the case of any property in the Public Fund, in accordance with the Public Fund Rules; or
- (b) in the case of any property held by the Company and which is not held in the Public Fund, one or more funds, institutions, associations or bodies the objects of which are the promotion of charity (and if the Company is registered under the ACNC Act, the recipient must also be so registered) and to which gifts are allowable deductions under the Tax Act.

Any such fund, institution, association or body shall be determined by the Members at or before the time of dissolution and, in default, by application to the Supreme Court in the place of the Company's registered office for determination.

60.2 Limit of liability

Every Member undertakes to contribute to the property of the Company if the Company is wound up while still a Member, or within 1 year after ceasing to be a Member, for payment of:

- (a) the Company's debts and liabilities contracted before the Member ceases to be a Member; and
- (b) the costs, charges, and expenses of winding up and for the adjustment of the rights of the contributors among themselves,

such amount as may be required, not exceeding \$10.

PUBLIC FUND

61 Public fund

61.1 The Public Fund Rules have effect.

61.2 An expression has, in a provision of the Public Fund Rules which relates to a particular defined term or provision of this Constitution, the same meaning as in that defined term or provision of this Constitution.

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PUBLIC FUND RULES

RULES OF THE BUSH HERITAGE AUSTRALIA FUND

- 1 The Bush Heritage Australia Fund (the *Fund*) is established pursuant to the Constitution.
- 2 The Fund is established for the specific and sole purpose of supporting the principal environmental objects of the Company.
- 3 The Fund is to:
 - (a) receive gifts of money or property made to the Company for the Fund's purpose;
 - (b) credit to the Fund any interest earned on such gifted money; and
 - (c) credit to the Fund any money derived from such gifted property.

The Fund is not to receive any money or property other than that received as a gift for the principal objects of the Company.
- 4 The Fund will be bound to comply with any rules that the Treasurer and the Minister for Environment may make from time to time restricting the use of gifts to the Fund to the principal objects of the Company.
- 5 The Company and the Fund will invite Members of the general public to make donations of money or property to the Fund for the environmental objects of the Company.
- 6 All moneys donated to the Company, all interest accrued on such moneys, all income derived from donated property and all money received from the realisation of such property will be deposited into the Fund.
- 7 Receipts are to be issued in the name of the Fund to donors and proper accounting records and procedures are to be kept and used for the Fund. All such receipts are to be endorsed with the following:

“The Bush Heritage Australia Fund is a public fund listed on the Register of Environmental Organisations under the Income Tax Assessment Act 1997 – Donations of \$2 or more are tax deductible.”
- 8 Donations to the Fund are to be kept separate from other funds of the Company.
- 9 A separate bank account is to be opened to deposit money donated to the Fund, including interest accruing thereon.
- 10 The Fund will be operated on a non-profit basis. None of the money or property accumulated by the Fund will be distributed to Members apart from the payment of proper remuneration for administrative services as permitted under rule 11.
- 11 The Fund can be used to pay for the reasonable operating expenses of the Company including rent, stationery, salaries and wages.

- 12 In the event of the winding up or dissolution of the Fund, if there remains, after the satisfaction of all its debts and liabilities, any surplus assets or property whatsoever within the Fund, it shall not be paid to or distributed among the Members but shall be given or transferred to:
- (a) one or more institutions or public funds which are on the Register of Environmental Organisations under Subdivision 30-E of the Tax Act as determined by the Board; or
 - (b) if there are no institutions or public funds which meet the requirements of rule 12(a), to one or more other funds, institutions, associations or bodies the objects of which are the promotion of charity and to which gifts are allowable deductions under the Tax Act.
- 13 The books and records of the Fund will be separately audited by the Fund's auditors to confirm that the Fund has been properly administered in accordance with these rules.
- 14 The Fund agrees to give to the Company Secretary of the Environment Department within 4 months after the end of each financial year, statistical information in the required form relating to donations received by the Fund during that financial year.
- 15 The Fund will be administered by a committee of management who shall be responsible for all its functions including the investment and application of funds.
- 16 The committee of management shall comprise no fewer than three persons and may include the Directors or the Company's Chief Executive. The committee will be appointed by the Board. A majority of the Members of the committee of management are required to have the requisite degree of responsibility to the general community as required by the Register of Environmental Organisations Guidelines, being persons who, because of their tenure of some public office or their position in the community, have a degree of responsibility to the community as a whole as distinct from obligations solely in regard to the environmental objectives of the Company.
- 17 Any changes to the membership of the committee of management of the Fund are to be advised to the Environment Department within a reasonable time following the making of the changes.
- 18 These rules may be amended only by a resolution recommended by a majority of the Board and as passed by the Members.
- 19 Any changes to these rules are to be advised to the Environment Department within a reasonable time following the making of the changes.

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