

CONSTITUTION OF THE Australian Foundation for Wilderness Ltd

Adopted by the Annual General Meeting held on 28 March 2022

Australian Business Number (ABN) 84 001 112 143

A company limited by guarantee

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Preliminary

1. Name of the Foundation and Status of Constitution

The name of the **Foundation** is **Australian Foundation for Wilderness Ltd** (the **Foundation**).

This Constitution replaces the original Memorandum and Articles of Association dated 3rd April 1973 establishing the **Foundation** as The Colong Foundation for Wilderness Ltd.

2. Type of Foundation

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

3. Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

4. The guarantee

Each member must contribute an amount not more than \$50 (the guarantee) to the property of the **Foundation** on a winding up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

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

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 70 and 72.

Charitable object and powers

6. Object

The objects of the Foundation are:

- (a) to promote the expansion, protection and restoration of wilderness and other landscapes of high environmental significance across Australia for the purpose of sustaining the ecological processes on which all life depends; and
- (b) to cooperate with other individuals, organisations and communities for the protection of landscapes of high environmental significance and consistent with that purpose, for the preservation of values of natural, Indigenous and cultural heritage.
- (c) to undertake related charitable endeavours.

7. Powers

Subject to clause 8, the **Foundation** has the following powers, which may only be used to carry out its object set out in clause 6:

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

8. Not-for-profit

- 8.1 The **Foundation** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 69.
- 8.2 Clause 8.1 does not stop the **Foundation** from doing the following things, provided they are done in good faith:
- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **Foundation**, or
 - (b) making a payment to a member in carrying out the **Foundation's** charitable object.

9. Amending the constitution

The members may amend this constitution by passing a **special resolution** but not if it causes the **Foundation** no longer to be a charity.

Members

10. Membership and register of members

- 10.1 The members of the **Foundation** are:
- (a) the registered members as at the date of the adoption of this Constitution,
 - (b) any other person that the directors allow to be a member, in accordance with this Constitution, and
 - (c) Life Members appointed by the directors.
- 10.2 The **Foundation** must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
- (a) for each current member and for each person who stopped being a member in the last 7 years:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices, and
 - iv. date the member was entered on to the register,
 - v. date the membership ceased.
- 10.3 The **Foundation** must give current members access to the register of members.
- 10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.
- 10.5 **Life Members.** The directors may appoint anyone to be a Life Member in recognition of outstanding service to the Foundation and the secretary will enter them as Life members on the register of members. Life Members shall not be required to pay membership fees.

11. Who can be a member

- 11.1 A person who supports the objects of the **Foundation** is eligible to apply to be a member of the **Foundation** under clause 12.
- 11.2 In this clause, 'person' means an individual or incorporated body.

12. How to apply to become a member

A person (as defined in clause 11.2) may apply to become a member of the **Foundation** by writing to the secretary or by applying through the organisation's designated online form, agreeing that they:

- (a) support the objects of the **Foundation**,
- (b) agree to comply with the **Foundation's** constitution, including paying the guarantee under clause 4 if required, and
- (c) agree to pay the membership fees of the Foundation as determined by the directors.

13. Directors decide whether to approve membership

- 13.1 The directors must consider an application for membership within a reasonable time after receiving the application.

13.1A. The directors may in their absolute discretion approve or reject the application.

- 13.2 If the directors approve an application, the applicant is considered to be a Member from the date of payment of the membership fee.
- 13.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 13.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 12(a) or 12(b). In that case, by applying to be a member, the applicant agrees to those three matters.

14. Register of members and commencement of membership

On receipt of the membership fees the secretary shall enter the new member on the register of members and advise the new member of that date being the commencement of their membership.

15. When a person stops being a member

A person immediately stops being a member if they:

- (a) die
- (b) are wound up or otherwise dissolved or deregistered (for an incorporated member)
- (c) resign, by writing to the secretary
- (d) have their membership terminated under clause 16, or
- (e) have not paid membership fees within three months of the due date.

Termination of Membership

16. Termination by directors

- 16.1 The directors may by resolution terminate the membership of a member if they decide the member has acted contrary to the best interests of the Foundation.
- 16.2 Before making that decision, the directors must first instruct the secretary to give the member notice of the conduct being considered as the basis for removal, give the member 14 days to provide a written submission in reply and take that submission into account.

17. Review by general meeting

A person whose membership has been terminated may request the secretary to include in the notice of the next General Meeting an item of business to review the decision of the directors and the person will be re-admitted to membership if a special resolution of the General Meeting so requires.

General meetings of members

18. General meetings called by directors

- 18.1 The directors may call a **general meeting**.
- 18.2 If members with at least 20% of the votes that may be cast at a **general meeting** make a written request to the **Foundation** for a **general meeting** to be held, the directors must:
 - (a) within 21 days of the members' request, give all members notice of a **general meeting**, and
 - (b) hold the **general meeting** within 2 months of the members' request.
- 18.3 The percentage of votes that members have (in clause 18.2) is to be worked out as at midnight before the members request the meeting.
- 18.4 The members who make the request for a **general meeting** must:
 - (a) state in the request any resolution to be proposed at the meeting
 - (b) sign the request, and
 - (c) give the request to the **Foundation**.
- 18.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

19. General meetings called by members

- 19.1 If the directors do not call the meeting within 21 days of being requested under clause 18.2, the members who made the request may call and arrange to hold a **general meeting**.
- 19.2 To call and hold a meeting under clause 19.1 the members must:
 - (a) as far as possible, follow the procedures for **general meetings** set out in this constitution
 - (b) call the meeting using the list of members on the **Foundation's** member register, which the **Foundation** must provide to the members making the request at no cost, and
 - (c) hold the **general meeting** within three months after the request was given to the **Foundation**.
- 19.3 The **Foundation** must pay the members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

20. Annual general meeting

- 20.1 An **annual general meeting** must be held at least once in every calendar year.
- 20.2 Even if these items are not set out in the notice of meeting, the business of an **annual general meeting** may include:
 - (a) a review of the **Foundation's** activities
 - (b) a review of the **Foundation's** finances
 - (c) any auditor's report

- (d) the election of directors, and
 - (e) the appointment and payment of auditors, if any.
- 20.3 Before or at the **annual general meeting**, the directors must give information to the members on the **Foundation's** activities and finances during previous financial year.
- 20.4 The chairperson of the **annual general meeting** must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **Foundation**.

21. Notice of general meetings

- 21.1 Notice of a **general meeting** must be given to:
- (a) each financial member entitled to vote at the meeting
 - (b) each life member
 - (c) each director, and
 - (d) the auditor (if any).
- 21.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 21.3 Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
 - (b) the general nature of the meeting's business
 - (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution
 - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - i. the proxy holder must be a financial member of the **Foundation**
 - ii. the proxy form must be delivered to the **Foundation** at its registered address, or the address (including an electronic address) specified in the notice of the meeting, and
 - iii. the proxy form must be delivered to the **Foundation** at least seven days before the meeting or it may be rejected at the discretion of the Chair of the Board.
- 21.4 If a **general meeting** is adjourned for one month or more, the members must be given new notice of the resumed meeting.

22. Quorum at general meetings

- 22.1 For a **general meeting** to be held, at least 20 financial members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 22.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 22.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week
 - (b) if the time is not specified – the same time, and
 - (c) if the place is not specified – the same place.
- 22.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

23. Auditor's right to attend meetings

- 23.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 23.2 The **Foundation** must give the auditor (if any) any communications relating to the **general meeting** that a member of the **Foundation** is entitled to receive.

24. Representatives of incorporated members

- 24.1 An incorporated member may appoint as a representative:
- (a) one individual to represent the member at meetings and to sign circular resolutions under clause 31, and
 - (b) the same individual or another individual for the purpose of being appointed or elected as a director.
- 24.2 The appointment of a representative by an incorporated member must:
- (a) be in writing
 - (b) include the name of the representative
 - (c) be signed on behalf of the incorporated member, and
 - (d) be given to the **Foundation** or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 24.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 24.4 The appointment may be standing (ongoing).

25. Using technology to hold meetings

- 25.1 The **Foundation** may hold a **general meeting** at two or more venues, with attendance either in person or using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 25.2 Anyone using this technology is taken to be present in person at the meeting.

26. Chairperson for general meetings

- 26.1 The **elected chairperson** is entitled to chair **general meetings**.
- 26.2 The members present and entitled to vote at a **general meeting** may choose a director or member to be the chairperson for that meeting if:
- (a) there is no **elected chairperson**, or
 - (b) the **elected chairperson** is not present within 30 minutes after the starting time set for the meeting, or
 - (c) the **elected chairperson** is present but says they do not wish to act as chairperson of the meeting.

27. Role of the chairperson

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

28. Adjournment of meetings

- 28.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** direct the chairperson to adjourn it.

- 28.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

29. Members' resolutions and statements

- 29.1 Members with at least 20% of the votes that may be cast on a resolution may give:
- (a) written notice to the **Foundation** of a resolution they propose to move at a **general meeting** (members' resolution), and/or
 - (b) a written request to the **Foundation** that the **Foundation** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 29.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 29.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 29.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 29.5 The percentage of votes that members have (as described in clause 29.1) is to be worked out as at midnight before the request or notice is given to the **Foundation**.
- 29.6 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

30. Time for giving and sending notice and statement.

- 30.1 A notice and any statement under Clause 29 must be given by members to the Secretary within 7 days from the date of a notice of general meeting.
- 30.2 The Secretary must send a copy of the notice and any statement at least 7 days before the date of the general meeting.

31. Notice of proposed members' resolution not required

The **Foundation** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:

- (a) it is more than 1,000 words long
- (b) the directors consider it may be defamatory
- (c) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the members.

Voting at general meetings

32. How many votes a member has

Each financial member has one vote.

33. Challenge to member's right to vote

- 33.1 A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 33.2 If a challenge is made under clause 33.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

34. How voting is carried out

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

35. When and how a vote in writing must be held

- 35.1 A vote in writing may be demanded at the meeting on any resolution instead of or after a vote by a show of hands by:
- (a) at least fifteen **members present**
 - (b) **members present** with at least 20% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
 - (c) the chairperson.
- 35.2 A vote in writing must be taken when and how the chairperson directs unless clause 35.3 applies.
- 35.3 A vote in writing must be held immediately if it is demanded under clause 35.1:
- (a) for the election of a chairperson under clause 26.2, or
 - (b) to decide whether to adjourn the meeting.
- 35.4 A demand for a vote in writing may be withdrawn.

36. Appointment of proxy

- 36.1 A financial member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 36.2 A proxy must be a financial member.
- 36.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
 - (c) join in to demand a vote in writing under clause 35.1.
- 36.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address
 - (b) the **Foundation's** name
 - (c) the proxy's name or the name of the office held by the proxy, and
 - (d) the meeting(s) at which the appointment may be used.
- 36.5 A proxy appointment may be standing (ongoing).
- 36.6 Proxy forms must be received by the **Foundation** at the address stated in the notice under clause 21.3(d) or at the **Foundation's** registered address at least seven days before a meeting or it may be rejected at the discretion of the Chair of the Board.

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

37. Voting by proxy

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

Directors

38. Number of directors

The **Foundation** shall have at least five and no more than nine directors.

39. Election and appointment of directors

- 39.1 Nominations for election of directors shall be included in the notice of **annual general meeting**.
- 39.2 Directors shall be elected by a resolution passed in an **annual general meeting** except for those appointed to fill a casual vacancy under clause 39.5.
- 39.3 Each of the directors must be appointed by a separate resolution, unless the members present have first passed a unanimous resolution that the elections may be voted on together.
- 39.4 A person is eligible for election as a director of the **Foundation** if they:
- (a) are a member of the **Foundation**, or a representative of a member of the **Foundation** (appointed under clause 24)
 - (b) are nominated by two members or representatives of members entitled to vote,
 - (c) give the **Foundation** their signed consent to act as a director of the **Foundation**, and
 - (d) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 39.5 The directors shall as soon as reasonably practicable appoint a person as a director to fill a casual vacancy if the number of directors is below five, if the person:

- (a) is a member of the **Foundation**, or a representative of a member of the **Foundation** (appointed under clause 24)
- (b) gives the **Foundation** their signed consent to act as a director of the **Foundation**, and
- (c) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

40. Election of chairperson

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

41. Term of office

- 41.1 Subject to this constitution, the term of a director shall start at the end of the **annual general meeting** at which they are elected and end at the conclusion of the **annual general meeting** in the third year following.
- 41.2 At each annual **general meeting**:
 - (a) any director appointed to fill a casual vacancy must retire, and
 - (b) unless the terms of at least two other directors are expiring at the end of the **annual general meeting**, one or more directors must retire so that there is an election for at least two directors in addition to the directors who were appointed to casual vacancies.
- 41.3 The directors who must retire at each annual **general meeting** under clause 41.2(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, then prior to the time for giving notice of the **annual general meeting** the director(s) to retire shall be determined by unanimous agreement of the directors failing which as determined by lot.
- 41.4 A director whose term has expired may nominate for election unless the director has held office for a continuous period of nine years in which case they may only be elected by a **special resolution**.
- 41.5 **When a director stops being a director**
A director stops being a director if they:
 - (a) give written notice of resignation as a director to the **Foundation**
 - (b) die
 - (c) are removed as a director by a resolution of the members
 - (d) stop being a member of the **Foundation**
 - (e) are a representative of a member, and that member stops being a member
 - (f) are a representative of a member, and the member notifies the **Foundation** that the representative is no longer a representative
 - (g) are absent for [3] consecutive directors' meetings without approval from the directors, or
 - (h) become ineligible to be a director of the **Foundation** under the **Corporations Act** or the **ACNC Act**.

Powers of directors

42. Powers of directors

- 42.1 The directors are responsible for managing and directing the activities of the **Foundation** to achieve the objects set out in clause 6.
- 42.2 The directors may use all the powers of the **Foundation** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.
- 42.3 The directors must decide on the responsible financial management of the **Foundation** including:
 - (a) determining membership fees.
 - (b) any suitable written delegations of power under clause 43, and
 - (c) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 42.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

43. Delegation of directors' powers

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

44. Payments to directors

- 44.1 The **Foundation** must not pay fees to a director for acting as a director.
- 44.2 The **Foundation** may:
 - (a) pay a director for work they do for the **Foundation**, other than as a director, if the amount is no more than a reasonable fee for the work done, or
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **Foundation**.
- 44.3 Any payment made under clause 44.2 must be approved by the directors.
- 44.4 The **Foundation** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

45. Execution of documents

- (a) Any document otherwise required to be under common seal may instead be executed by the **Foundation** if the document is signed by:-two directors of the **Foundation**, or
- (b) a director and the secretary.

Duties of directors

46. Duties of directors

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

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **Foundation**
- (b) to act in good faith in the best interests of the **Foundation** and to further the charitable purpose(s) of the **Foundation** set out in clause 6
- (c) not to misuse their position as a director
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 47
- (f) to ensure that the financial affairs of the **Foundation** are managed responsibly, and
- (g) not to allow the **Foundation** to operate while it is insolvent.

47. Conflicts of interest

- 47.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
- (a) to the other directors, or
 - (b) if all of the directors have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.
- 47.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 47.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 47.4:
- (a) be present at the meeting while the matter is being discussed, or
 - (b) vote on the matter.
- 47.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of the **Foundation**, 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 **Foundation** (see clause 66)
 - (c) their interest relates to a payment by the **Foundation** under clause 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 **Foundation**, and
 - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

48. When the directors meet

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

49. Calling directors' meetings

- 49.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 49.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

50. Chairperson for directors' meetings

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

51. Quorum at directors' meetings

- 51.1 The quorum for a directors' meeting is a majority (more than 50%) of directors.
- 51.2 A quorum must be present for the whole directors' meeting.

52. Using technology to hold directors' meetings

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

53. Passing directors' resolutions

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

54. Circular resolutions of directors

- 54.1 The directors may pass a circular resolution without a directors' meeting being held.
- 54.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 54.3 or clause 54.4.
- 54.3 Each director may sign:
 - (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 54.4 The **Foundation** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

- 54.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 54.3 or clause 54.4.

Secretary

55. Appointment and role of secretary

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

Minutes and records

56. Minutes and records

- 56.1 The **Foundation** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**
 - (b) minutes of circular resolutions of members
 - (c) a copy of a notice of each **general meeting**, and
 - (d) a copy of a members' statement distributed to members under clause 30.
- 56.2 The **Foundation** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of directors.
- 56.3 To allow members to inspect the **Foundation's** records:
- (a) the **Foundation** must give a member access to the records set out in clause 56.1, and
 - (b) the directors may authorise a member to inspect other records of the **Foundation**, including records referred to in clause 56.2 and clause 57.1.
- 56.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
 - (b) the chairperson of the next meeting.
- 56.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

57. Financial and related records

- 57.1 The **Foundation** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 57.2 The **Foundation** must retain its records for at least 7 years.

- 57.3 The directors must take reasonable steps to ensure that the **Foundation's** records are kept safe.

The Fund

58.1 The Fund

- (a) The **Foundation** will continue to maintain and operate the Wilderness Australia Fund (previously named the Colong Wilderness Fund) as a deductible gift recipient fund into which all donations to the **Foundation** will be paid and from which payments may only be made for the object of the **Foundation** in clause 6 including the costs of maintaining an office, payment of staff, communication costs, stationery, publication costs and consultant fees.
- (b) The Fund is established within the meaning of Subdivision 30E of the Income Tax Assessment Act 1997 and will be operated in compliance with the Act.
- (c) The Fund will be operated on a not-for-profit basis.
- (d) Members of the public are invited to make gifts of money or property to the Fund for the environmental purposes of the **Foundation**.
- (e) Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Fund.
- (f) Any allocation of funds or property to other persons or organisations will be made in accordance with the established purposes of the **Foundation** and not be by way of conduit or influenced by the preference of the donor.
- (g) No portion shall be distributed, paid, or transferred directly or indirectly by way of dividend, bonus or by way of profit to members, directors, or trustees of the organisation.
- (h) **Ministerial Rules.** The **Foundation** must comply with any rules that the Treasurer and the Minister with responsibility for the environment may make to ensure that gifts made to the Fund are only used for its principal purpose.
- (i) **Winding up.** In case of the winding-up of the Fund, any surplus assets are to be transferred to another fund with similar objectives that is on the Register of Environmental Organisations.

58.2 Accounting

- (a) All donations must be credited to a separate Fund bank account. The Fund must not receive any other money or property into its account.
- (b) Proper accounting records and procedures are to be kept and used for the Fund.
- (c) Receipts are to be issued in the name of the Fund.

58.3 Management Committee

A committee of management of no fewer than three persons will administer the Fund. The committee of management will be appointed by a majority of the directors of the **Foundation** and may be directors of the **Foundation**. A Majority of the members of the committee are required to be Responsible Persons as defined by the Guidelines to the Register of Environmental Organisations.

58.4 Information to Department

- (a) The **Foundation** must inform the Commonwealth Department responsible for the Register of Environmental Organisations (REO) as soon as possible if:
- it changes its name or the name of the Fund; or
 - there is any change to the membership of the management committee of the Fund; or
 - there has been any departure from the model rules for public funds located in the Guidelines to the Register of Environmental Organisations.
- (b) **Statistical information** required by the Department on donations to the Fund will be provided within four months of the end of the financial year. An audited financial statement for the **Foundation** and the Fund will be supplied with the annual statistical return, if required by the REO. The statement will provide information on the expenditure of the Fund monies and the management of the Fund assets.

By-Laws

59 By-laws

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

Notice

60 What is notice

- 60.1 Anything written to or from the **Foundation** under any clause in this constitution is written notice and is subject to clauses 61 to 63, unless specified otherwise.
- 60.2 Clauses 61 to 63 do not apply to a notice of proxy under clause 36.6.

61 Notice to the Foundation

- 61.1 Written notice or any communication under this constitution may be given to the **Foundation**, the directors or the secretary by:
- (a) delivering it to the **Foundation's** registered office
 - (b) posting it to the **Foundation's** registered office or to another address chosen by the **Foundation** for notice to be provided
 - (c) sending it to an email address or other electronic address notified by the **Foundation** to the members as the **Foundation's** email address or other electronic address, or
 - (d) sending it to the fax number notified by the **Foundation** to the members as the **Foundation's** fax number.

62 Notice to members

- 62.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person

- (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
- (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any)
- (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any), or
- (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

62.2 If the **Foundation** does not have an address for the member, the **Foundation** is not required to give notice in person.

63 When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 62.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

64 Foundation's financial year

The **Foundation's** financial year is from 1 January to 31 December unless the directors pass a resolution to change the financial year.

Indemnity, insurance and access

65 Indemnity

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

66 Insurance

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

67 Directors' access to documents

67.1 A director has a right of access to the financial records of the **Foundation** at all reasonable times.

67.2 If the directors agree, the **Foundation** must give a director or former director access to:

- (a) certain documents, including documents provided for or available to the directors, and
- (b) any other documents referred to in those documents.

Winding up

68 Surplus assets not to be distributed to members

If the **Foundation** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **Foundation**, unless that member or former member is a charity described in clause 69.1.

69 Distribution of surplus assets

69.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **Foundation** is wound up must be distributed to one or more charities:

- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6, and
- (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **Foundation**.

69.2 The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **Foundation** may apply to the Supreme Court to make this decision.

Definitions and interpretation

70 Definitions

In this constitution:

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

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

elected chairperson means a person elected by the directors to be the **Foundation's** chairperson under clause 40

financial member means a member who has paid their membership fees

Foundation means the company referred to in clause 1

general meeting means a meeting of members and includes the annual **general meeting**, under clause 20.1

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

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

special resolution means a resolution:

- i. of which notice has been given under clause 21.3(c), and
- ii. that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution, and
- iii. **surplus assets** means any assets of the **Foundation** that remain after paying all debts and other liabilities of the **Foundation**, including the costs of winding up.

71 Reading this constitution with the Corporations Act

- 71.1 The replaceable rules set out in the **Corporations Act** do not apply to the **Foundation**.
- 71.2 While the **Foundation** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.
- 71.3 If the **Foundation** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.
- 71.4 A word or expression that is defined in the **Corporations Act** or used in that Act and covering the same subject, has the same meaning as in this constitution.

72 Interpretation

In this constitution, reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).