



HERBERT  
SMITH  
FREEHILLS

# Constitution

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WinZero Inc

ABN 17 583 480 707



# Contents

## Table of contents

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|          |   |           |
|----------|---|-----------|
|          | <b>Constitution</b>   | <b>4</b>  |
| <b>1</b> | <b>Association's name</b>                                     | <b>4</b>  |
| <b>2</b> | <b>Association's purposes</b>                                 | <b>4</b>  |
| <b>3</b> | <b>Association's powers</b>                                   | <b>4</b>  |
| <b>4</b> | <b>Not for profit</b>   | <b>5</b>  |
|          | 4.1 Application of the association's income and property..... | 5         |
|          | 4.2 Board members fees.....                                   | 5         |
|          | 4.3 Other payments to board members.....                      | 5         |
| <b>5</b> | <b>Membership</b>   | <b>5</b>  |
|          | 5.1 Members.....  | 5         |
|          | 5.2 Subscription fee.....                                     | 6         |
|          | 5.3 Register.....   | 6         |
|          | 5.4 Grievance procedure.....                                  | 6         |
|          | 5.5 Disciplinary action.....                                  | 7         |
|          | 5.6 When membership ceases.....                               | 8         |
|          | 5.7 Rights, obligations and liabilities of members.....       | 8         |
| <b>6</b> | <b>Winding up</b>   | <b>8</b>  |
|          | 6.1 Voluntary winding up.....                                 | 8         |
|          | 6.2 Winding up by the Secretary.....                          | 8         |
|          | 6.3 Winding up by the Supreme Court.....                      | 9         |
|          | 6.4 Surplus property on winding up.....                       | 9         |
| <b>7</b> | <b>Inclusion on the Register</b>                              | <b>9</b>  |
|          | 7.1 Application of this rule.....                             | 9         |
|          | 7.2 Maintaining a Public Fund.....                            | 9         |
|          | 7.3 Ministerial rules.....                                    | 9         |
|          | 7.4 Bank account.....   | 10        |
|          | 7.5 Receipts.....   | 10        |
|          | 7.6 Notifying the Department.....                             | 10        |
|          | 7.7 Statistical information.....                              | 10        |
|          | 7.8 Conduit policy.....                                       | 10        |
|          | 7.9 Public Fund committee.....                                | 11        |
|          | 7.10 Winding up or revocation.....                            | 11        |
| <b>8</b> | <b>Altering this constitution</b>                             | <b>11</b> |
| <b>9</b> | <b>General meetings</b>                                       | <b>11</b> |
|          | 9.1 Convening general meetings.....                           | 11        |
|          | 9.2 Convening general meetings at request of members.....     | 11        |
|          | 9.3 Notice of general meetings.....                           | 12        |
|          | 9.4 Changing, postponing or adjourning general meetings.....  | 12        |
|          | 9.5 Quorum at general meetings.....                           | 13        |



|           |  |           |
|-----------|--|-----------|
| 9.6       | Digital general meetings.....                          | 13        |
| 9.7       | Chair of general meetings.....                         | 13        |
| 9.8       | Decisions of the members.....                          | 14        |
| 9.9       | Voting by show of hands or ballot.....                 | 14        |
| 9.10      | Voting by proxy or representative.....                 | 15        |
| 9.11      | Decisions of members without a meeting.....            | 15        |
| <b>10</b> | <b>Board members</b>                                   | <b>15</b> |
| 10.1      | Composition of board.....                              | 15        |
| 10.2      | Process for retirement and re-election.....            | 16        |
| 10.3      | Nomination of board members.....                       | 16        |
| 10.4      | Register of board members.....                         | 16        |
| 10.5      | Vacation of office.....                                | 16        |
| 10.6      | Powers and duties of board members.....                | 17        |
| 10.7      | Board positions.....                                   | 17        |
| 10.8      | Board members' interests.....                          | 17        |
| 10.9      | Use of information or position.....                    | 18        |
| <b>11</b> | <b>Board meetings</b>                                  | <b>19</b> |
| 11.1      | Convening board meetings.....                          | 19        |
| 11.2      | Digital board meetings.....                            | 19        |
| 11.3      | Quorum at board meetings.....                          | 20        |
| 11.4      | Chair.....   | 20        |
| 11.5      | Decisions of board members.....                        | 20        |
| 11.6      | Decisions without a meeting.....                       | 20        |
| 11.7      | Advisory councils and sub-committees.....              | 21        |
| 11.8      | Validity of acts.....                                  | 21        |
| <b>12</b> | <b>Public Officer</b>                                  | <b>21</b> |
| 12.1      | Appointment.....                                       | 21        |
| 12.2      | Vacation in office.....                                | 22        |
| <b>13</b> | <b>Indemnity and insurance</b>                         | <b>22</b> |
| 13.1      | Persons to whom the indemnity and insurance apply..... | 22        |
| 13.2      | Indemnity.....   | 22        |
| 13.3      | Insurance.....   | 22        |
| 13.4      | Savings.....   | 23        |
| <b>14</b> | <b>Notice</b>  | <b>23</b> |
| 14.1      | Notice from the association.....                       | 23        |
| 14.2      | Notice to the association.....                         | 23        |
| 14.3      | Time of service.....                                   | 23        |
| 14.4      | Other communications and documents.....                | 23        |
| <b>15</b> | <b>Source and management of funds</b>                  | <b>24</b> |
| <b>16</b> | <b>Records</b>   | <b>24</b> |
| 16.1      | Custody of records.....                                | 24        |
| 16.2      | Minutes.....   | 24        |
| 16.3      | Inspection of records.....                             | 24        |
| 16.4      | Returning documents of the association.....            | 25        |
| <b>17</b> | <b>Execution of documents</b>                          | <b>25</b> |
| <b>18</b> | <b>Definitions and interpretation</b>                  | <b>25</b> |
| 18.1      | Definitions.....                                       | 25        |
| 18.2      | Interpretation.....                                    | 27        |



|           |  |           |
|-----------|--|-----------|
| <b>19</b> | <b>Application of the Associations Act</b> | <b>28</b> |
| 19.1      | Associations Act.....                      | 28        |
| 19.2      | Model constitution .....                   | 28        |



# Constitution

## **WinZero Inc**

### **An incorporated association**

#### **1 Association's name**

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The name of the association is WinZero Inc.

#### **2 Association's purposes**

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The association's purposes are to:

- (a) protect and enhance the natural environment;
- (b) provide education about the natural environment;
- (c) conduct research about the natural environment,

by, without limitation:

- (1) enabling the reduction of carbon emissions through any means including through regenerative land practices and renewable energy;
- (2) educating and involving the community, all levels of government and businesses in Wingecarribee Shire about living and operating in a way that will enable the net zero emissions target to be met before 2050;
- (3) researching the most effective ways to reduce carbon emissions and encouraging wide scale awareness and adoption;
- (4) building resilience to climate change by strengthening biodiversity through habitat protection and wildlife corridors.

#### **3 Association's powers**

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Solely for carrying out the association's purposes, the association may exercise all of the powers of an incorporated association under the Associations Act.



## 4 Not for profit

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### 4.1 Application of the association's income and property

- (a) The association's income and property must be applied solely towards promoting the association's purposes.
- (b) No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of bonus or other profit distribution, to any member in their capacity as a member.
- (c) This rule 4 does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any board member to the extent permitted by law and this constitution.

### 4.2 Board members fees

No board member fees may be paid to the board members.

### 4.3 Other payments to board members

All other payments to board members must be approved by the board members including, but not limited to:

- (a) out-of-pocket expenses incurred by a board member in performing a duty as a board member of the association; or
- (b) a service rendered to the association by a board member in a professional or technical capacity or as an employee, where:
  - (1) the provision of the service has the prior approval of the board members; and
  - (2) the amount payable is not more than an amount which commercially would be reasonable payment for the service.

## 5 Membership

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### 5.1 Members

- (a) If required under ITAA 97 in order to retain its DGR status, the association must have at least 50 members.
- (b) The members are:
  - (1) the persons who are members at the time of adopting this constitution; and
  - (2) any other persons who are admitted to membership in accordance with this rule 5.
- (c) Every applicant for membership of the association must apply in the form and manner decided by the board members.
- (d) After receipt of an application for membership, the board members must consider the application and decide whether to admit or reject the applicant. The board members need not give any reason for rejecting an application.



- (e) Every member agrees to comply with these rules and support the purposes of the association set out in rule 2.

## 5.2 Subscription fee

- (a) An annual subscription fee must be decided by the board members, and notified to the members.
- (b) The board members must notify all members of the amount and time for payment of the annual subscription fee and of any alteration to the annual subscription fee. Varying amounts may be applied as decided by the board members and made available to the members in a notice or membership policy.
- (c) Where the annual subscription fee is not received:
  - (1) one month after the due date, the board members may issue a reminder notice to the member;
  - (2) one month after the reminder notice is sent, the member's rights will be suspended, including the right to receive notices of general meetings and the right to attend and vote at general meetings; and
  - (3) two months after the reminder notice is sent, the person ceases to be a member.

## 5.3 Register

The association must maintain a register of members which sets out the name, address and email address (if any) for receipt of notices. The register must also record the date membership started and when it ceased.

## 5.4 Grievance procedure

- (a) Any dispute under this constitution between a member and another member or between a member and the association must, unless the parties otherwise agree, be dealt with by the procedure in this rule 5.4.
- (b) Any party to a dispute between members may refer the dispute to the board members for determination or mediation.
- (c) If there is a dispute between the association and a member, either party may require the dispute be referred to mediation.
- (d) The mediator must be unbiased.
- (e) Subject to rule 5.4(d), the mediator may be:
  - (1) a board member;
  - (2) a member; or
  - (3) a third party appointed by the board members.
- (f) The mediator will be decided by agreement between the parties to the dispute, or in the absence of agreement within 14 days:
  - (1) in the case of a dispute between a member and another member, a person appointed by the board members; or
  - (2) in the case of a dispute between a member and the association, a person who is a mediator appointed or employed by a Community Justice Centre of NSW (Department of Justice) or its successor in law.



- (g) Any party to a dispute may appoint any person to act on behalf of that party.
- (h) In each dispute:
  - (1) the parties to the dispute must have a reasonable opportunity to be heard;
  - (2) due consideration must be given to any statement submitted by a party; and
  - (3) natural justice must be accorded to the parties to the dispute throughout the process.
- (i) If the mediation does not result in the dispute being resolved, within a reasonable time as decided by the mediator, or failing this decision, within one month of the party requiring mediation, any party to the dispute may refer the matter to an unbiased decision maker.
- (j) A determination made under this rule is final and binding on all parties to the dispute.

## 5.5 Disciplinary action

- (a) The board members may decide there are grounds to investigate if:
  - (1) a member has failed to comply with the rules or any procedures or policies of the association;
  - (2) it is in the interests of the association for a member to no longer remain a member; or
  - (3) the member is not supporting the purposes of the association or by act or omission may cause detriment to the association or its reputation.
- (b) The board may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (c) The board members may establish a sub-committee or consider the matter itself or refer the matter to a third party, provided the decision maker is unbiased.
- (d) At least two weeks before a meeting to consider the issues, the decision maker, must give the member notice:
  - (1) stating the date, place and time of the meeting;
  - (2) setting out the grounds on which the investigation is based; and
  - (3) informing the member that she or he may attend the meeting and may give an explanation or submission.
- (e) The decision maker has 4 weeks to consider the issues and may call for further information and hearings. The decision maker may decide on the appropriate disciplinary action, if any, including a decision to expel the member. Any decision must be notified to the member within 6 weeks from the meeting referred to in rule 5.5(d).
- (f) A member who has received notice under rule 5.5(d) must not initiate a grievance procedure under rule 5.4 until the determination under this rule 5.5.
- (g) A determination by the decision maker is final and binding on all parties.





## 5.6 When membership ceases

A person immediately ceases to be a member if the person:

- (a) dies;
- (b) resigns as a member by giving notice to the association;
- (c) becomes of unsound mind or the person is, or their estate is, liable to be dealt with in any way under a law relating to mental health;
- (d) becomes bankrupt or insolvent or makes any arrangement or composition with her or his creditors;
- (e) is expelled under rule 5.5; or
- (f) ceases to be a member under rule 5.2.

## 5.7 Rights, obligations and liabilities of members

- (a) The members have the right to:
  - (1) receive notice, attend, participate and vote at general meetings; and
  - (2) inspect the association's records, including the register of members.
- (b) The members are required to comply with this constitution and any policies of the association that are applicable to members.
- (c) The liabilities of a member, as a member, are limited to the amount, if any, unpaid by the member in respect of any subscription or other membership fee.

# 6 Winding up

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## 6.1 Voluntary winding up

An association may be wound up voluntarily if the association so resolves by special resolution.

## 6.2 Winding up by the Secretary

- (a) The Secretary may wind up the association under a section 61A certificate (**Certificate**).
- (b) The Secretary may issue the Certificate if:
  - (1) the association ceases operation;
  - (2) the association ceases to have 5 or more members;
  - (3) the association's board has not been able to form a quorum for 2 months; or
  - (4) the Secretary is satisfied that there is a significant public interest in winding up, or that not winding up the association may place public funds at risk.



### 6.3 Winding up by the Supreme Court

- (a) The Supreme Court of NSW may order the winding up of an association in accordance with section 63 of the Associations Act.
- (b) An application to the Supreme Court for the winding up of the association may be made by the association, a member, creditor, or the Secretary.

### 6.4 Surplus property on winding up

- (a) If, on the winding up or dissolution of the association, any property remains after satisfaction of all its debts and liabilities, and after the application of rule 7.10, this property must only be given or transferred to an entity that is charitable at law.
- (b) The entity referred to in rule 6.4(a) must be decided by the members of the association by special resolution at or before the time of winding up or dissolution of the association and, if the members cannot decide, by the Supreme Court of NSW.
- (c) The distribution of surplus property must be approved by the Secretary.

## 7 Inclusion on the Register

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### 7.1 Application of this rule

This rule 7 only applies if the association is on the Register and only to the extent required by relevant law, regulation or guideline applicable to the association, or any administrative requirement or practice of the Department, the Australian Taxation Office or any regulator.

### 7.2 Maintaining a Public Fund

- (a) The association must establish and maintain for its principal purposes set out in rule 2 a fund to be called the **WinZero Gift Fund** (or such other name as decided by the company and notified to the Department) (**Public Fund**):
  - (1) to which Gifts and Deductible Contributions are made;
  - (2) to which any money received by the association because of those Gifts and Deductible Contributions is credited; and
  - (3) that does not receive any other money or property.
- (b) The association must seek donations from the public to the Public Fund.
- (c) Rule 4 applies to the Public Fund.

### 7.3 Ministerial rules

The association must comply with any rules that the Treasurer of the Commonwealth of Australia, the Commissioner or the Minister responsible for the Register make to ensure that Gifts or Deductible Contributions made to the Public Fund will be used only for the association's principal purposes set out in rule 2.



#### **7.4 Bank account**

- (a) The association must maintain a separate bank account and proper accounting records for the Public Fund.
- (b) The signatories must be Australian resident members authorised by the association.

#### **7.5 Receipts**

Receipts for Gifts or Deductible Contributions to the Public Fund must be made in the name of the Public Fund and state:

- (a) the number of the receipt;
- (b) the name and ABN of the association
- (c) the name of the Public Fund and a reference to it being on the Register;
- (d) the date and amount (or value, if property) of the Gift or Deductible Contribution;
- (e) the name of the donor or contributors; and
- (f) the fact that it was a Gift or Deductible Contribution (and if it was a Deductible Contribution, the relevant fundraising event and GST inclusive market value of the event or goods or services purchased).

#### **7.6 Notifying the Department**

The association must notify the Department as soon as practicable of:

- (a) any changes to the association's name or the name of its Public Fund;
- (b) any changes to its purposes as set out in rule 2;
- (c) any change to the committee administering the Public Fund;
- (d) any departure from this rule 7;
- (e) the association becoming insolvent or any process for the winding up of the association commencing or the association experiencing any other financial difficulties; or
- (f) any other issues reasonably requested by the Department.

#### **7.7 Statistical information**

- (a) The association must provide to the Department statistical information on the Gift and Deductible Contributions made to the Public Fund within four months of the end of the financial year.
- (b) The association must provide an audited financial statement for the association and the Public Fund with the annual statistical return which provides information on the expenditure of the Public Fund monies and the management of the Public Fund assets.

#### **7.8 Conduit policy**

The association must not act as a mere conduit for a donor by passing a donation of money or property to other charities, bodies or persons as directed or indicated by the donor. It must not act as a collection agency for donations intended by a donor for another institution or person.



## 7.9 Public Fund committee

The Public Fund must be managed and administered by at least 3 people, a majority of whom are Responsible Persons. This may be the board members of the association or a committee formed by the board for this purpose.

## 7.10 Winding up or revocation

At the first occurrence of:

- (a) the winding up of the Public Fund;
- (b) the association ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of ITAA 97; or
- (c) the association and the Public Fund ceasing to be on the Register,

any surplus assets of the Public Fund must be transferred to a fund on the Register, the identity of which must be decided by the board members of the association.

## 8 Altering this constitution

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- (a) The association must not pass a special resolution altering this constitution, if, as a result, the association will cease to be a charity.
- (b) A resolution purposing to alter this constitution in breach of rule 8(a) will have no effect.
- (c) This constitution may only be altered, deleted or added to, in accordance with the Associations Act.

## 9 General meetings

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### 9.1 Convening general meetings

- (a) The association must be accountable to the members within the terms of the law, including, as applicable, the Associations Act, the ACNC Act and this constitution.
- (b) The association must convene an annual general meeting within 6 months of the end of the financial year.
- (c) The board members may convene a general meeting at such time and place as the board members think fit.

### 9.2 Convening general meetings at request of members

- (a) If at least 5% of members request that a general meeting be held for a proper purpose and with a valid resolution, the board members must:
  - (1) within 21 days of the members' request, give all members notice of a general meeting; and
  - (2) hold the meeting within 2 months of the members' request.
- (b) The members who make the request must:



- (1) state in the request the resolution to be proposed at the meeting and the identity of the members making the request; and
  - (2) give notice of the request to the association.
- (c) The board members may not postpone or cancel a general meeting convened in response to a members requisition under rule 9.3(a) in accordance with rule 9.5 without the prior consent of the persons who requisitioned or convened the meeting.

### **9.3 Notice of general meetings**

- (a) At least 21 days' notice of every general meeting must be given in any manner authorised by rule 14 to each person who is at the date of the notice:
- (1) a member;
  - (2) a board member; or
  - (3) the Auditor, if applicable.
- (b) A notice of a general meeting must:
- (1) specify the date, time and place of the meeting;
  - (2) state the general nature of the business to be transacted at the meeting;
  - (3) state in full any proposed special resolution and state that the resolution is being proposed as a special resolution; and
  - (4) specify any details of voting such as proxies or other methods of voting, as decided by the board members.
- (c) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting does not invalidate anything done or resolution passed at the general meeting if:
- (1) the non-receipt or failure occurred by accident or error; or
  - (2) before or after the meeting, the person notifies the association of that person's agreement to that thing or resolution.
- (d) A person's attendance at a general meeting waives any objection to a failure to give notice, or the giving of a defective notice, of the meeting.

### **9.4 Changing, postponing or adjourning general meetings**

- (a) The board members may change the venue for, postpone, adjourn or cancel a general meeting if:
- (1) they reasonably consider that the meeting has become unnecessary;
  - (2) the venue would be unreasonable or impractical;
  - (3) a change is necessary in the interests of conducting the meeting efficiently; or
  - (4) a quorum is not present under rule 9.5.
- (b) No business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.



- (c) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (d) Except as provided by rule 9.4(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

### **9.5 Quorum at general meetings**

- (a) No business may be transacted at a general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum consists of at least 5 members entitled to vote and who are present personally, by proxy or who have submitted their vote by post or electronically under rule 9.9(g) (if permitted).
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting the meeting stands adjourned to the day, and at the time and place, that the board members decide or, if the board members do not make a decision, to the same day in the next week at the same time and place.
- (d) If at the adjourned meeting under rule 9.4(c), a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

### **9.6 Digital general meetings**

- (a) The simultaneous linking together by telephone or digital means of a sufficient number of the members to constitute a quorum constitutes a general meeting, provided the members have a reasonable opportunity to participate at the meeting.
- (b) All the provisions in this constitution in this rule 9 apply, as far as they can, with any necessary changes, to general meetings by telephone or digital means.
- (c) A member who takes part in a meeting by telephone or digital means is taken to be present in person at the meeting.
- (d) A meeting by telephone or digital means is taken as held at the place decided by the chair of the meeting, as long as at least one of the members involved was at that place for the duration of the meeting.

### **9.7 Chair of general meetings**

- (a) The chair of the board must preside as chair at a general meeting if present within 15 minutes after the time appointed for the meeting and willing to act.
- (b) If there is no chair of the board or both the conditions in rule 9.7(a) have not been met, the members present must elect another chair of the meeting.
- (c) A chair elected under rule 9.7(b) must be:
  - (1) another board member who is present and willing to act; or
  - (2) if no other board member present at the meeting is willing to act, a member who is present and willing to act.
- (d) A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chair of the meeting, whose decision is final.



- (e) Where the votes on a proposed resolution are equal, the chair of the meeting has a second or casting vote.

## 9.8 Decisions of the members

- (a) Every member has one vote.
- (b) The board members may decide the manner in which voting is conducted.
- (c) Each member entitled to vote may vote, as decided by the board members:
  - (1) in person, or where a member is a body corporate, by its representatives;
  - (2) by proxy; or
  - (3) by postal or electronic ballot in accordance with rule 9.9(g) (if permitted by the board members).
- (d) A proxy or representative is entitled to a separate vote for each member the person represents, in addition to any vote the person may have as a member in her or his own right.
- (e) An objection to the qualification of a person to vote must be:
  - (1) raised before the vote objected to is counted; and
  - (2) referred to the chair, whose decision is final.
- (b) A vote not disallowed by the chair under rule 9.8(e)(2) of a meeting is valid for all purposes.
- (f) Except where by law a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members.

## 9.9 Voting by show of hands or ballot

- (a) A resolution put to the vote of a general meeting must be decided on a show of hands unless, before the vote is taken or immediately after the declaration of the result of the show of hands, a ballot (poll) is demanded by:
  - (1) the chair of the meeting; or
  - (2) any member present.
- (b) A demand for a ballot does not prevent a general meeting continuing for the transaction of any business except the question on which the ballot has been demanded.
- (c) Unless a ballot is duly demanded, a declaration by the chair of a general meeting that a resolution has been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the association, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of, or against, the resolution.
- (d) If a ballot is duly demanded at a general meeting, it must be taken in such manner and either at once or after an interval or adjournment or otherwise, as the chair of the meeting directs. The result of the ballot is the resolution of the meeting at which the ballot was demanded.
- (e) A ballot demanded at a general meeting on the election of a chair of the meeting or on a question of adjournment must be taken immediately.



- (f) The demand for a ballot may be withdrawn.
- (g) A resolution of the association may be conducted by postal or electronic ballot. Schedule 3 of the Regulation sets out how postal and electronic ballots must be conducted.

### **9.10 Voting by proxy or representative**

- (a) A member may appoint a proxy by giving notice to the association, and an incorporated member (a body corporate) may appoint a proxy or a representative, to attend a meeting and vote on behalf of the member. The proxy does not need to be a member of the association.
- (b) The appointment of a proxy or representative may direct the manner in which the proxy or representative is to vote in respect of a particular resolution and, where this is provided, the proxy or representative is not entitled to vote on the proposed resolution except as directed in the appointment.
- (c) The appointment of a proxy or representative is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution in person, the person acting as proxy or representative for the appointer is not entitled to vote, and must not vote, as the appointer's proxy on the resolution.

### **9.11 Decisions of members without a meeting**

- (a) A members' resolution may be passed without a meeting (unless a meeting is required under the Associations Act or for passing a special resolution). Such a resolution is passed if:
  - (1) the members are given a document setting out that resolution; and
  - (2) all of the members consent to the resolution.
- (b) A member may consent to a resolution by:
  - (1) signing the document containing the resolution (or a copy of that document); or
  - (2) giving notice to the association signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them.
- (c) The resolution is taken as passed when the last member signs or consents to that resolution.

## **10 Board members**

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### **10.1 Composition of board**

- (a) The minimum number of board members is 3.
- (b) The board members may appoint any individual as a board member, either to fill a casual vacancy or as an addition to the existing board members, provided:
  - (1) the individual is a member of the association;
  - (2) before appointing the board member, that individual signs a consent to act as a board member;





- (3) the individual is not disqualified from managing a corporation under the Corporations Act nor from being a responsible entity under the ACNC Act.
- (c) Subject to rule 10.5, the board members must retire from office as provided in rule 10.2.

## 10.2 Process for retirement and re-election

- (a) At every annual general meeting all board members must retire from office and may stand for re-election.
- (b) A board member retiring from office is eligible for re-election subject to a maximum term of 9 years, unless the maximum term is varied for a particular board member by the board members.
- (c) The retirement of a board member from office and the re-election of the board member or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-election or election occur.

## 10.3 Nomination of board members

- (a) Nominations of candidates for election as board members must be received by the association at least 45 days prior to the annual general meeting unless the board members decide otherwise.
- (b) The nominations must be:
  - (1) accompanied by a short biographical statement and the consent of the candidate;
  - (2) endorsed by one member other than the candidate; and
  - (3) given to the association by notice.

## 10.4 Register of board members

- (a) The association must keep a register of board members, containing the following information:
  - (1) the board member's name, date of birth and residential address;
  - (2) the date on which the board member takes office; and
  - (3) the date on which the board member vacates office.
- (b) The register of board members must be kept in NSW at the main premises of the association, or if the association has no premises, at the association's registered address.
- (c) Any change in the board's membership must be recorded in the register within one month after the change occurs.
- (d) The register must, at all reasonable hours, be kept available for inspection, free of charge, by any person.

## 10.5 Vacation of office

The office of a board member becomes vacant:

- (a) if the board member dies;



- (b) if the board member resigns by giving notice to the association;
- (c) if the board member is removed from office by ordinary resolution of the members in general meeting;
- (d) if the board member is disqualified from managing a corporation under the Corporations Act or disqualified from being a responsible entity under the ACNC Act;
- (e) except to the extent of a leave of absence granted by the board members, if the board member fails to attend at least three consecutive board meetings or at least four meetings over a period of one year; or
- (f) if a person is appointed to make decisions on behalf of the board member under a law relating to mental health.

### **10.6 Powers and duties of board members**

- (a) The board members are responsible for managing the association's affairs and carrying out the association's purposes set out in rule 2.
- (b) The board members may exercise all the association's powers which are not required, by the Associations Act or by this constitution, to be exercised by the members in general meeting.
- (c) The board members must ensure they are aware of, and comply with, their duties set out in the Associations Act and in the regulations of the ACNC Act.
- (d) The board members may delegate any of their powers and functions to one or more of the board members, a committee, an employee, an agent or other person as the board members decide.

### **10.7 Board positions**

- (a) The board members may elect a chair, a deputy chair, a treasurer, or other positions as and when the board members decide and may decide the period for which that board member is to hold that position.
- (b) The Public Officer must be appointed in accordance with rule 12 and need not be a member of the board.

### **10.8 Board members' interests**

- (a) Subject to rule 10.8(b), a board member who has a perceived or actual material conflict of interest (including a material personal interest) in a matter being considered by the board members must:
  - (1) as soon as she or he becomes aware of her or his interest, disclose to the board members the nature and extent of her or his interest and the relation of the interest to the activities of the association; and
  - (2) where it is a material personal interest, disclose the nature and extent of the interest to the members at the next general meeting.
- (b) Rule 10.8(b)(2) does not apply in respect of an interest that exists only by virtue of the fact that the board member:
  - (1) is an employee of the association;
  - (2) is a member of a class of persons for whose benefit the association is established; or



- (3) has the interest in common with all or a substantial proportion of the members.
- (c) A board member who has a perceived or actual material conflict of interest in a contract, or proposed contract, with the association, or who has a perceived or actual material conflict of interest in a matter being considered by the board members, must not, unless rule 10.8(b)(2) and (b)(3) applies:
  - (1) be present while the matter is being considered; or
  - (2) vote on the matter.
- (d) A disclosure under rule 10.8(a)(1) and (2) must be recorded in the minutes of the meetings at which the disclosure was made. This may be a standing notice of disclosure.
- (e) A contract is not liable to be avoided by the association on any ground arising from the fiduciary relationship between the board member and the association and the board member is not liable to account for profits derived from the contract, provided rules 10.8(a) and (c) have been complied with (if applicable) by the board member.
- (f) If there are not enough board members to form a quorum to consider a matter due to rule 10.8(c), any board member (including a board member with a perceived or actual material conflict of interest) may call a general meeting to consider the matter.
- (g) The board members may make regulations or adopt a policy dealing with a conflict of interest, including requiring the disclosure of interests that a board member, and any person considered by the board members as related to or associated with the board member, may have, or may be perceived to have, in any matter concerning or which may affect the association, in any way.

## 10.9 Use of information or position

- (a) A board member must not:
  - (1) while a board member; and
  - (2) after ceasing to be a board member,knowingly or recklessly make improper use of information acquired by virtue of her or his position in the association so as to:
  - (3) gain, directly or indirectly, any pecuniary benefit or material advantage for himself or herself or any other person; or
  - (4) cause a detriment to the association.
- (b) A board member must not knowingly or recklessly make improper use of her or his position in the association so as to:
  - (1) gain, directly or indirectly, any pecuniary benefit or material advantage for himself or herself or any other person; or
  - (2) cause detriment to the association.



## 11 Board meetings

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### 11.1 Convening board meetings

- (a) The board members may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (b) A board member may convene a meeting of the board members by giving reasonable notice to the other board members.
- (c) A Public Officer must, on the requisition of a board member, convene a meeting of the board members.
- (d) A notice of a board meeting:
  - (1) must specify the time and place of the meeting;
  - (2) need not state the nature of the business to be transacted at the meeting;
  - (3) may be given immediately before the meeting; and
  - (4) may be given in any manner authorised by rule 14.1.
- (e) A board member may waive the requirement of notice of a meeting of board members by giving notice to the association.
- (e) The non-receipt of notice of a meeting, or a failure to give notice of a meeting, does not invalidate any thing done or resolution passed at the meeting if:
  - (1) the non-receipt or failure occurred by accident or error;
  - (2) the board member waives notice of that meeting before or after the meeting;
  - (3) the board member notifies the association of their agreement to that thing or resolution personally or by post, telephone, email or other electronic means before or after the meeting; or
  - (4) the board member attended the meeting.

### 11.2 Digital board meetings

- (a) The simultaneous linking together by telephone or digital means of a sufficient number of the board members to constitute a quorum constitutes a board meeting.
- (b) A board member who takes part in a meeting by telephone or digital means is taken to be present in person at the meeting.
- (c) All the provisions in this rule 11 apply, as far as they can and with any necessary changes, to board meetings by telephone or digital means.
- (d) A meeting by telephone or digital means is taken as held at the place decided by the chair of the meeting, as long as at least one of the board members was at that place for the duration of the meeting.
- (e) If a technical difficulty occurs which means that one or more board members cannot participate, the chair may adjourn the meeting until the difficulty is remedied or may, if a quorum of board member remains present, continue with the meeting.



### 11.3 Quorum at board meetings

- (a) No business may be transacted at a board meeting unless a quorum of board members is present at the time the business is dealt with.
- (b) A quorum consists of a majority of board members, or at least 3 board members, whichever is the greater number.
- (c) If the number of board members in office at any time is not sufficient to constitute a quorum, or is less than the minimum number of board members fixed under this constitution, the remaining board members must act as soon as possible to appoint additional board members, as required, and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

### 11.4 Chair

- (a) The board members may elect one of the board members as chair and may decide the period for which that person is to be the chair.
- (b) The chair of the board must preside as chair at each board meeting if present within 10 minutes after the time appointed for the meeting and willing to act.
- (c) If there is no chair or the conditions in rule 10.4(b) have not been met, the board members present must elect one of the board members as chair of the meeting.

### 11.5 Decisions of board members

- (a) A resolution at a board meeting must be decided by a majority of votes cast by the board members present.
- (b) Where the votes on a proposed resolution are equal, the chair of the meeting has a second or casting vote.

### 11.6 Decisions without a meeting

- (a) A resolution is taken to have been passed by a meeting of board members if:
  - (1) all of the board members who would be entitled to receive notice and vote on a resolution are given a document setting out that resolution; and
  - (2) all the board members sign or consent to the resolution.
- (b) A board member may consent to a resolution by:
  - (1) signing the document containing the resolution (or a copy of that document);
  - (2) giving notice to the association signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
  - (3) telephoning the chair or Public Officer and signifying assent to the resolution and clearly identifying its terms.
- (c) The resolution is taken as passed when the last board member signs or consents to that resolution.



### **11.7 Advisory councils and sub-committees**

- (a) The board members may delegate any of their powers to one or more advisory councils or sub-committees consisting of the number of committee members and other individuals they think fit.
- (b) An advisory council or sub-committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions given by the board members.
- (c) The provisions of this rule 11 that apply to meetings and resolutions of board members apply, so far as they can and with any necessary changes, to meetings and resolutions of any committee.

### **11.8 Validity of acts**

An act done by a person acting as a board member, a meeting of board members, or a person exercising a power or function delegated to them by a board member is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person, the board members or the advisory council or sub-committee (as applicable) when the act was done:

- (a) a defect in the appointment of the person as a board member or delegate;
- (b) the person being disqualified as a board member or having vacated office; or
- (c) the person not being entitled to vote.

## **12 Public Officer**

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### **12.1 Appointment**

- (a) The board members must appoint a Public Officer to hold the position subject to the Associations Act and carry out the duties provided in the Associations Act and any additional duties as decided by the board members.
- (b) Before being appointed, the Public Officer must:
  - (1) consent to the appointment;
  - (2) be at least 18 years old; and
  - (3) be a resident of NSW.
- (c) The Public Officer may hold any other position or office in the association but is not required to be a board member.
- (d) Rule 10.9 relating to use of information or position applies to the Public Officer as though she or he is a board member.
- (e) The Public Officer's acts are valid despite any defect in her or his appointment.
- (f) Within 28 days after taking office as Public Officer, a person must notify the Secretary in the approved form.
- (g) The Public Officer must notify the Secretary within 28 days if there is any change to their address.



## 12.2 Vacation in office

- (a) The office of a Public Officer becomes vacant if the Public Officer:
- (1) dies;
  - (2) resigns by giving notice to the association;
  - (3) is removed from office by resolution of the members;
  - (4) ceases to ordinarily reside in NSW;
  - (5) becomes an insolvent under administration within the meaning of the Corporations Act;
  - (6) is found guilty of or convicted of an indictable offence punishable by imprisonment, whether or not a term of imprisonment is imposed; or
  - (7) becomes a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health.
- (b) Within 14 days after vacating office, a former Public Officer of an association must ensure that all documents in her or his possession that belong to the association are delivered to a board member of the association.
- (c) The board members must appoint a new Public Officer within 28 days of the office becoming vacant and provide notice as required under the Associations Act.

## 13 Indemnity and insurance

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### 13.1 Persons to whom the indemnity and insurance apply

The indemnity and insurance referred to in this rule 13 applies to Indemnified Officers.

### 13.2 Indemnity

- (a) The association must indemnify, on a full indemnity basis and to the full extent permitted by law, each Indemnified Officer against all losses or liabilities (including costs and expenses) incurred by the person as an officer of the association.
- (b) This indemnity:
- (1) is a continuing obligation and is enforceable by an Indemnified Officer even though that person has ceased to be an officer of the association;
  - (2) is enforceable without that person having first to incur any expense or make any payment; and
  - (3) operates only to the extent that the loss or liability in question is not covered by insurance.

### 13.3 Insurance

The association may, to the extent permitted by law:

- (a) purchase and maintain insurance; or



- (b) pay or agree to pay a premium for insurance,  
for any Indemnified Officer against any liability incurred by the person as an officer of the association where the board members consider it appropriate to do so.

#### **13.4 Savings**

Nothing in this rule 13:

- (a) affects any other right or remedy that an Indemnified Officer may have in respect of any loss or liability referred to in this rule 13; or
- (b) limits the capacity of the association to indemnify or provide or pay for insurance for any person to whom this rule 13 does not apply.

## **14 Notice**

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### **14.1 Notice from the association**

The association may give notice and any communication:

- (a) personally;
- (b) by post to the person's nominated address;
- (c) by email or other electronic means; or
- (d) by notifying the person by email or other electronic means, that the notice or communication or publication is available at a specified electronic address.

### **14.2 Notice to the association**

Notice may be given to the association:

- (a) by personal service at its registered address;
- (b) by post to its registered address; or
- (c) by sending it to the association's principal email address, or if there is no principal email address, to the email address of the Public Officer.

### **14.3 Time of service**

- (a) A notice from the association properly addressed and posted is taken to be served at 10.00am on the day that is three Business Days after the date it was posted.
- (b) Where the association sends a notice by email or other electronic means, the notice is taken as served at the time it is sent.
- (c) If service under rule 14.3(b) is on a day which is not a Business Day or is after 4.00pm (addressee's time), the notice is regarded as having been received at 9.00am on the following Business Day.

### **14.4 Other communications and documents**

Rules 14.1 to 14.3 apply, as far as they can, with any necessary changes, to the service of any communication or document.





## 15 Source and management of funds

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- (a) The funds of the association are to be derived from fees, subscriptions, gifts, sponsorships, donations, government grants, fundraising activities and such other sources as the board members determine.
- (b) The funds must be managed as decided by the board members.
- (c) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed:
  - (1) as the board members decide; or
  - (2) failing a decision, by any 2 board members.

## 16 Records

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### 16.1 Custody of records

The board members or their delegate for this purpose must keep in its or their custody, or under its or their control, all records, books, documents and securities of the association.

### 16.2 Minutes

- (a) The board members must ensure:
  - (1) minutes of general meetings, board meetings and committee meetings (including all resolutions proposed); and
  - (2) records of resolutions passed by members, board members and committees, without a meeting,are recorded accurately and kept as part of the association's records. The records must be made within one month after the relevant meeting is held or resolution passed.
- (b) The minutes of a meeting must be signed within a reasonable time by the chair of the meeting or the chair of the next meeting.

### 16.3 Inspection of records

- (a) The documents associated with incorporation, this constitution, the trust deed of any trust of which the association is a trustee, and the minutes of general meetings, including accounting records and financial statements submitted to that general meeting, must be made available for inspection by any member who gives the chair, the Public Officer or delegate for this purpose, reasonable notice that the member wishes to inspect them.
- (b) The board members must give a member a copy of anything referred to in rule 16.3(a) within 14 days of a request from a member and payment of any reasonable fee set by the board members.
- (c) A member (other than a board member) may apply to the board members to have access to:
  - (1) minutes of board meetings or meetings of advisory councils or sub-committees;



- (2) any resolutions of the board or any committee;
- (3) records, books, relevant documents or securities of the association.
- (d) The application must state the member’s purpose of the access and specify how the member will use the information.
- (e) The board members must review the application at the board meeting following the receipt of the application, or if that is not practicable, at the following board meeting. The board members may request further information or undertakings from the member as to the use of the information. The board members may:
  - (1) agree to the application, subject to the association’s legal and other duties (including privacy, commercial confidentiality, governance) on such terms and conditions as it considers necessary, including setting access and time limits to control any disruption or inconvenience to management or volunteer time, and may require the member to enter a confidentiality deed or deed restricting the use and disclosure, and any other conditions the board members consider necessary or desirable; or
  - (2) refuse the application in its absolute discretion without the need to provide reasons, if it considers it may not be in the interests of the association, or any of the other entities referred to in the relevant documents, to allow the member access.

#### 16.4 Returning documents of the association

Any person who has possession or control of documents that belong to the association are required to return the documents to the Public Officer within 28 days after the person ceases to be a member, or ceases to hold the position or role by virtue of which he or she had possession or control of the documents.

### 17 Execution of documents

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There is no common seal. Contracts and documents of the association must be signed:

- (a) as authorised by the board members; or
- (b) by any 2 board members; or
- (c) by a board member and the Public Officer.

### 18 Definitions and interpretation

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#### 18.1 Definitions

The meanings of the terms used in these rules are set out below.

| Term     | Meaning  |
|----------|--|
| ACNC Act | <i>Australian Charities and Not-for-profits Commission Act 2012 (Cth).</i> |



| <b>Term</b>                    | <b>Meaning</b>  |
|--------------------------------|---|
| <b>Associations Act</b>        | <i>Associations Incorporation Act 2009 (NSW).</i>   |
| <b>Auditor</b>                 | the auditor of the association for the purposes of audit or review under the Associations Act.  |
| <b>board member</b>            | a member of the committee of management of the association.   |
| <b>Business Day</b>            | Monday to Friday inclusive, excluding New Years' Day, Australia Day, Good Friday, Easter Monday, ANZAC Day, Christmas Day and Boxing Day.   |
| <b>Commissioner</b>            | the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of ITAA 97.   |
| <b>Corporations Act</b>        | <i>Corporations Act 2001 (Cth).</i>   |
| <b>Deductible Contribution</b> | a voluntary transfer of money or property in relation to an eligible fundraising event as described in item 7 or item 8 of the table in section 30 15 of the ITAA 97.   |
| <b>Department</b>              | The Department of Agriculture, Water and the Environment or its successor.  |
| <b>Financial Year</b>          | period of 12 months ending on 30 June.  |
| <b>Gift</b>                    | a voluntary transfer of money or property (including financial assets such as shares) where the donor receives no material benefit or advantage as described in item 1 of the table in section 30-15 of the ITAA 97.  |
| <b>Indemnified Officer</b>     | <ol style="list-style-type: none"><li>1 each person who is or has been a board member or Secretary of the association; and</li><li>2 an office holder within the meaning of the Associations Act; and</li><li>3 any former officer holder as the board members in each case decide.</li></ol> |
| <b>ITAA 97</b>                 | <i>Income Tax Assessment Act 1997 (Cth).</i>  |



| <b>Term</b>               | <b>Meaning</b>   |
|---------------------------|--|
| <b>NSW</b>                | New South Wales, Australia.  |
| <b>Public Fund</b>        | a fund established under rule 7.   |
| <b>Public Officer</b>     | the person who is appointed as the association's Public Officer, and, until he or she is replaced by a person so appointed, includes the person who is nominated as the association's Public Officer in the association's application for registration.                            |
| <b>Register</b>           | the Register of Environmental Organisations maintained by the Department.  |
| <b>Regulation</b>         | <i>Associations Incorporation Regulation 2016</i> (NSW).   |
| <b>Responsible Person</b> | an individual who has a degree of responsibility to the wider Australian community as set out in the Register of Environmental Organisations Guidelines issued by the Department.  |
| <b>Secretary</b>          | <ol style="list-style-type: none"><li>1 the NSW Commissioner for Fair Trading, Department of Finance, Services and Innovation (<b>Finance Department</b>); or</li><li>2 if there is no such position in the Finance Department, the Secretary of the Finance Department.</li></ol> |

## 18.2 Interpretation

In this constitution:

- (a) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (b) a word or expression defined or used in the Corporations Act, covering the same subject, has the same meaning in this constitution;
- (c) a reference to a document being 'signed' or to 'signature' includes that document being executed under hand or under seal or by any other method and, in the case of a communication in electronic form, includes the document being authenticated in accordance with the Corporations Act or any other method approved by the board members;
- (d) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or representative;
- (e) the singular includes the plural and the plural includes the singular; and



- (f) headings are used for convenience only and do not affect the interpretation of these rules.

## 19 Application of the Associations Act

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### 19.1 Associations Act

Unless the contrary intention appears:

- (a) an expression used in a rule that deals with a matter dealt with by a provision of the Associations Act has the same meaning as in that provision; and
- (b) subject to rule 19.1(a), an expression in a rule that has a defined meaning for the purposes of the Associations Act has the same meaning as in the Associations Act.

### 19.2 Model constitution

The provisions of these rules displace each provision of the Model constitution, except to the extent required by the Associations Act.