

The Wombat Foundation Constitution

**A company limited by guarantee not having a share capital incorporated
under the Corporations Act 2001**

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Table of Contents

1.	Definitions	1
2.	Interpretation	1
3.	Replaceable rules	2
4.	Actions authorised under the Act	2
5.	Objects	2
5.1	Principal objects	2
5.2	Achievement of objects	3
5.3	Application of income and property	3
5.4	Entrenchment of objects provisions	4
5.5	Amendment of Constitution	4
6.	Liability	4
7.	Membership	4
8.	Application for membership	5
9.	Annual Membership Fee	5
10.	Register of members	5
11.	Resignation of a member	6
12.	Non payment of Annual Membership Fees	6
13.	Misconduct of a member	6
14.	Other grounds for cessation of membership	7
15.	Member's liability following cessation of membership	7
16.	Power of directors to convene	7
17.	Annual general meetings	8
18.	Notice of general meetings	8
19.	Business of general meetings	8
20.	Quorum	8
21.	If quorum not present	8
22.	Chair of meetings	9
23.	Adjournments	9
24.	Voting at general meetings	9
25.	Procedure for polls	9
26.	Casting Vote	10
27.	Representation and voting of members	10
28.	Members who are minors	10
29.	Objections to qualification to vote	10



30.	Appointment of proxy	10
31.	Proxy documents	10
32.	Lodgment of proxies etc	11
33.	Validity of proxies	11
34.	Where proxy is incomplete	12
35.	Right of officers and advisers to attend general meeting	12
36.	Number of directors	12
37.	Appointment of directors	12
38.	Retirement of directors	13
39.	Removal of directors	13
40.	Vacation of office	13
41.	Alternate directors	14
42.	Powers of directors	14
43.	Appointment of attorneys	15
44.	Negotiable instruments	15
45.	Accounts	15
46.	Proceedings	15
47.	Meetings by technology	16
48.	Quorum at meetings	16
49.	Chairman of directors	16
50.	Proceedings at meetings	17
51.	Written resolutions	17
52.	Delegation and Committees	17
53.	Material personal interests	18
54.	Secretary	19
55.	Other officers	19
56.	Inspection of records	20
57.	Notices generally	20
58.	Receipt of general meeting notices	20
59.	Indemnity	21
60.	Winding up	22
60.1	Distribution of surplus assets	22
60.2	Limit of liability	22
	Annexure	23

GENERAL

1. Definitions

In this Constitution unless the context requires otherwise:

Act means the Corporations Act 2001 and the regulations made under that Act;

Annual Membership Fee has the meaning ascribed to it in Section 9;

ASIC means the Australian Securities and Investments Commission;

Chairman means the person who is duly appointed by the directors to act as chairman of the Company;

Company means The Wombat Foundation;

Constitution means the constitution of the Company as amended from time to time;

director means a person appointed or elected to the office of director of the Company in accordance with this Constitution and includes any alternate directors duly acting as a director;

Environment Australia means the trading name of the Commonwealth Department of the Environment and Heritage;

Fund means the public fund established under clause 5.1(g);

member means a person or body corporate admitted to membership of the Company in accordance with this Constitution;

Member Present means, in connection with a meeting, a member present in person or by proxy, attorney and where the member is a body corporate, by representative;

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

Recovery Team means the group appointed by the Queensland Environmental Protection Agency to oversee the recovery program for the Northern Hairy-nosed Wombat;

Register means the Register of Environmental Organisations;

secretary means a person appointed to the office of secretary in accordance with this Constitution; and

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

2. Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) A gender includes all genders.
- (b) The singular includes the plural and conversely.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.



- (d) A reference to a paragraph or sub-paragraph is to a paragraph or sub-paragraph, as the case may be, of the section or paragraph, respectively, in which the reference appears.
- (e) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (f) Division 10 of Part 1.2 of the Act applies in relation to this Constitution as if it were an instrument made under the Act.
- (g) The Annexure to this Constitution forms part of this Constitution.
- (h) Except in so far as a contrary intention appears in this Constitution, an expression has, in a provision of this Constitution which relates to a particular provision of the Act, the same meaning as in that provision of the Act.

3. Replaceable rules

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

4. Actions authorised under the Act

Where the Act authorises or permits a company to do any matter or thing if so authorised by its constitution, the Company is and shall be taken by this clause to be authorised or permitted to do that matter or thing, despite any other provisions of this Constitution.

5. Objects

5.1 Principal objects

The principal objects for which the Company is established are:

- (a) to assist, financially or otherwise, in the recovery and preservation of the Northern Hairy-nosed Wombat;
- (b) to obtain funds or other property through donations, bequests, public appeals, special events and from the corporate sector;
- (c) to pursue business interests, commercial activities, sponsorship and other appropriate relationships with the public and private sectors to achieve the objects of the Company;
- (d) to increase the profile of the Northern Hairy-nosed Wombat;
- (e) to promote research into the Northern Hairy-nosed Wombat;
- (f) to work in association with the Recovery Team; and
- (g) to establish and maintain a public fund to be called The Wombat Foundation Public Fund for the specific purpose of supporting the environmental objects/purposes of The Wombat Foundation. The Fund is established to receive all gifts of money or property for this purpose and any money received because of such gifts must be credited to its bank account. the Fund must not receive any other money or property into its account and it must comply with subdivision 30-E of the Tax Act.



5.2 Achievement of objects

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

- (a) the Company agrees to 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 objects;
- (b) the Company shall inform the Commonwealth Department responsible for the environment 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;
- (c) any allocation of funds or property to other persons or organisations will be made in accordance with the principal objects of the Company and will not be influenced by the preference of the donor;
- (d) in the event of the winding up of the Fund, if there remains, after the satisfaction of all its debts and liabilities, any surplus assets or property whatsoever within the Fund, it shall be transferred to another fund with similar objectives which is on the Register;
- (e) statistical information requested 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 Company and the Fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of Fund monies and the management of the Fund's assets.

5.3 Application of income and property

- (a) The income and property of the Company shall be applied solely towards the promotion of the principal objects of the Company set out in this Constitution and no portion shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the members of the Company.
- (b) Nothing contained in this Constitution shall prevent the payment in good faith by the Company:
 - (i) of reasonable and proper remuneration (whether by way of salary, wage, commission, bonus or otherwise) to any member, officer or servant of the Company for any services rendered to the Company;
 - (ii) to any member for goods supplied to the Company by the member at arm's length and in the ordinary course of business;
 - (iii) to any member of interest at a rate not exceeding the lowest rate for the time being paid in Australia by HSBC Bank Australia Limited in respect of term deposits on money borrowed from the member;
 - (iv) of reasonable and proper rent for premises demised or let by any member to the Company.



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- (c) No director shall be appointed to any salaried or remunerated office of the Company and no remuneration or other benefit shall be paid or given to any director except for:
- (i) out-of-pocket expenses incurred by a director in the performance of any duty as director where the amount payable does not exceed an amount previously approved by the directors;
 - (ii) moneys to any director, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer where the provision of the service has the prior approval of the directors and where the amount payable is approved by the directors and is not more than an amount which commercially would be reasonable payment for the service;
 - (iii) an insurance premium in respect of a contract insuring a director for a liability incurred as an officer of the Company where the directors have approved the payment of the premium; or
 - (iv) any amount to a director in respect of the indemnity given under Section 59 where such payment has been approved by the directors.

5.4 Entrenchment of objects provisions

Sections 5.1, 5.2 and 5.3 will be altered, amended or added to only with the prior notification to ASIC if so required by section 150 of the Act.

5.5 Amendment of Constitution

No addition, alteration or amendment to this Constitution will be effective unless such addition, alteration or amendment has, if required, been approved by:

- (a) the relevant Minister or other relevant authority under the *Collections Act 1966* (Qld) or similar legislation in that or other jurisdiction; or
- (b) any state enactment, rule or regulation to which the Company is subject, the relevant Minister or Governmental department.

6. Liability

The liability of the members is limited.

7. Membership

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- (a) To the extent required by the Guidelines of Environment Australia, the number of members of the Company will be at least 50 and may be limited above that number from time to time by the directors.
 - (b) The members of the Company shall consist of:
 - (i) the subscribers to the Constitution; and
 - (ii) such other natural persons or organisations as shall be admitted to membership in accordance with this Constitution from time to time by the directors.

8. Application for membership

- (a) Every applicant for membership of the Company shall be proposed by one member and seconded by another member of the Company.
- (b) The application for membership shall be made in writing, signed on behalf of the applicant, its proposer and seconder, and shall be in such form as the directors may prescribe from time to time.
- (c) At the next meeting of the directors after the receipt of any application for membership, such application shall be considered by the directors who shall decide upon the admission or rejection of the applicant. The directors shall not be required to give any reason for their decision.
- (d) When an applicant has been accepted for membership the secretary shall send a written notice of acceptance and a request for payment of the entrance fee and first annual subscription to the applicant.
- (e) If the result of the decision in clause 8(c) is to admit the applicant as a member of the Company, the applicant will immediately become a member of the Company and the applicant's name must be registered in the Company's register of members.
- (f) Upon payment of its first annual subscription (if payable) the applicant shall become a member of the Company, provided nevertheless that if such payment is not made within two calendar months after the date of the notice, the directors may in their discretion cancel the applicant's acceptance of membership of the Company.

9. Annual Membership Fee

- (a) The members shall pay to the Company the annual membership fee (*Annual Membership Fee*) determined by the members in general meeting from time to time. The directors have the power to waive or amend the requirement for the payment of the annual membership fee for any member.
- (b) All annual subscriptions (if any) become due and payable in advance on the first day of July each year.

10. Register of members

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

- (a) the names and addresses of the members;
- (b) the date at which the name of a member was entered in the register; and
- (c) the date on which any person ceased to be a member.



11. Resignation of a member

A member may at any time by giving written notice to the secretary, resign as a member of the Company. The resignation shall be effective from the date of receipt of the notice by the secretary and that member's name shall be removed from the register of members.

12. Non payment of Annual Membership Fees

- (a) If the Annual Membership Fee of a member remains unpaid for a period of two calendar months after it becomes due, the Secretary shall give notice to the member of that fact.
- (b) If payment is not received in the time stipulated in the notice referred to in clause 12(a), (which shall be no less than 14 days) the directors may expel the member from membership of the Company and remove the member's name from the register of members.
- (c) The directors may reinstate the member and restore its name to the register on payment of all arrears, if the directors think fit to do so.

13. Misconduct of a member

- (a) If any member:
 - (i) is in breach of or wilfully refuses or neglects to comply with the provisions of this Constitution; or
 - (ii) is guilty of any act or omission which, in the opinion of the directors, is unbecoming of a member or prejudicial to the interests of the Company,the directors may censure, suspend or expel the member from the Company and remove that member's name from the register of members.
- (b) The directors shall not discipline or expel a member under paragraph (a) unless:
 - (i) at least seven days' written notice has been given to the member setting out the date, time and place at which the question of discipline or expulsion of that member shall be considered by the directors and the nature of the alleged misconduct; and
 - (ii) the member has been given the right to make submissions, in either written or verbal form, to the directors in respect of the alleged misconduct.
- (c) If the directors resolve to discipline or expel a member, the Secretary shall immediately give notice of the resolution to the member. The member has the right, exercisable by notifying the Secretary within 14 days after receipt of the notice (the **Notice Period**), to have the matter dealt with by the Company in general meeting. Upon receipt of such notice, the Secretary shall cause, within three months of the receipt of the notice, a general meeting to be held to determine the outcome of the appeal.
- (d) At any general meeting convened under clause 13(c) to hear an appeal against the disciplining or expulsion of a member, both the member and the directors shall be given a reasonable opportunity to present their respective cases.



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- (e) The outcome of the appeal shall be determined by a resolution of the Members Present at the meeting. If a resolution to discipline or expel the member is passed at the meeting by a majority of two-thirds of the Members Present, that member shall, as the case may be, be so disciplined or cease to be a member and the member's name shall be removed from the register of members.
 - (f) If the member does not notify the Secretary before the expiration of the Notice Period that she or he wishes to have the matter dealt with by the Company in general meeting or the member's appeal is unsuccessful, the resolution of the directors shall take effect on such date and, if applicable, the member shall cease to be a member and her or his name shall be removed from the register of members.

14. Other grounds for cessation of membership

A member's membership of the Company shall automatically cease:

- (a) in the case of a member who is a natural person on the date that the member:
 - (i) dies;
 - (ii) becomes of an unsound mind or a person whose estate is liable to be dealt with in any way under the laws relating to mental health;
 - (iii) becomes bankrupt; or
 - (iv) is convicted of an indictable offence;
- (b) in the case of a member which is a body corporate on the date:
 - (i) a liquidator is appointed in connection with the winding up of the member; or
 - (ii) an order is made by a court for the winding up or deregistration of the member.

15. Member's liability following cessation of membership

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

- (a) all Annual Membership Fees which have become due and payable and which remain unpaid at the date of resignation or termination of membership;
- (b) any sum not exceeding \$10 for which that member is liable to pay under Section 60.2; and
- (c) all other monies due by that member to the Company,
- (d) and shall not be entitled to any full or partial refund of any Annual Membership Fees.

16. Power of directors to convene

- (a) Any director may convene a general meeting whenever the director thinks fit.
- (b) Any director may cancel by notice in writing to all members any meeting convened by the director, except that a meeting convened on the requisition of a member or members must not be cancelled without the consent of the relevant member or members.

- (c) The directors may postpone a general meeting or change the place at which it is to be held by notice not later than 72 hours prior to the time of the meeting to all persons to whom the notice of meeting (the *first notice*) was given. The postponing notice must specify the place, date and time of the meeting (the *New Meeting*). The New Meeting is taken to be duly convened under the first notice.

17. Annual general meetings

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

18. Notice of general meetings

- (a) Each notice convening a general meeting shall contain the information required by law.
- (b) The non-receipt of a notice convening a general meeting by, or the accidental omission to give notice to, any person entitled to receive notice does not invalidate the proceedings at or any resolution passed at the meeting.

19. Business of general meetings

Unless all members are present as Members Present and agree otherwise, no business shall be transacted at any general meeting except as set out in the notice of meeting.

20. Quorum

- (a) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this Constitution, five Members Present constitute a quorum.

21. If quorum not present

If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) where the meeting is convened on the requisition of members, the proposed meeting shall be dissolved;
- (b) in any other case:
 - (i) the meeting stands adjourned to a day and at a time and place as the directors decide or, if no decision is made by the directors, to the same day in the next week at the same time and place; and
 - (ii) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

22. Chair of meetings

- (a) Subject to clause 22(b), the Chairman, shall chair every general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no Chairman; or
 - (ii) the Chairman is not present within 15 minutes after the time appointed for the meeting or does not wish to act as chair of the meeting,

the directors present shall choose one of their number or, in the absence of all directors or if none of the directors present wish to act, the Members Present shall elect one of their number to be chair of the meeting.

23. Adjournments

- (a) The chair of the meeting may and shall if so directed by the meeting adjourn the meeting from time to time and from place to place.
- (b) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting may be given if the directors consider necessary.
- (d) Except as provided by clause 23(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

24. Voting at general meetings

- (a) Any resolution to be considered at a meeting shall be decided on a show of hands unless a poll is demanded.
- (b) A declaration by the chair of the meeting that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting shall be taken as conclusive evidence of the fact without the need to show the number or proportion of the votes recorded in favour of or against the resolution.
- (c) A member of the Company shall not be entitled to attend or speak or vote at any general meeting of members unless all sums presently payable by that member in respect of her or his membership of the Company have been paid.

25. Procedure for polls

- (a) A poll when demanded shall be taken in the manner and at the time the chair of the meeting directs.
- (b) The result of the poll shall be a resolution of the meeting at which the poll was demanded.
- (c) A poll demanded on the election of a chair or on a resolution of adjournment shall be taken forthwith.

- (d) Subject to clause 25(c), the demand for a poll shall not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded.

26. Casting Vote

At a general meeting, in the case of an equality of votes on a show of hands or on a poll the chair of the meeting has a casting vote in addition to any vote to which the chair may be entitled as a member.

27. Representation and voting of members

Subject to this Constitution:

- (a) at meetings of members, each member entitled to attend and vote may attend and vote in person or by proxy, or attorney and (where the member is a body corporate) by representative;
- (b) on a show of hands, every Member Present having the right to vote at the meeting has one vote; and
- (c) on a poll, every Member Present having the right to vote at the meeting has one vote.

28. Members who are minors

- (a) If a member is a minor, any person who properly has the guardianship of the member's estate or affairs may, subject to clause 28(b), exercise any rights of the member in relation to a general meeting as if such person were the member.
- (b) Any person with powers of guardianship must not exercise any rights under clause 28(a), unless and until the person has provided the directors with satisfactory evidence of the person's appointment and status.

29. Objections to qualification to vote

- (a) An objection to the qualification of a person to vote may be raised only at the meeting or adjourned meeting at which the vote objected to is tendered.
- (b) Any objection shall be referred to the chair of the meeting, whose decision shall be final.
- (c) A vote allowed after an objection shall be valid for all purposes.

30. Appointment of proxy

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

31. Proxy documents

- (a) An instrument appointing a proxy must:

- (i) be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing; or
- (ii) if the appointor is a corporation, be either under seal or under the hand of a duly authorised officer or attorney.
- (b) A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (c) An instrument appointing a proxy may be in any form that the directors may accept or stipulate.

32. Lodgment of proxies etc

- (a) For an instrument appointing a proxy, an attorney or a representative to attend and vote at a meeting of the Company (or at all meetings for a specified period) to be effective the following documents must be received by the Company not less than 48 hours (or any shorter period as the directors may permit) before the commencement of the meeting or adjourned meeting at which the attorney proposes to vote:
 - (i) the instrument, and any power of attorney or other authority under which the instrument is signed or a notarially certified copy of that power or authority; and
 - (ii) any evidence that the directors may require of the validity and non-revocation of any power of attorney.
- (b) For the purposes of clause 32(a), the Company receives these documents when they are received at any of the following:
 - (i) the Company's registered office;
 - (ii) a fax number at the Company's registered office; or
 - (iii) a place or fax number specified for the purpose in the notice of meeting.

33. Validity of proxies

- (a) A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:
 - (i) the previous death or unsoundness of mind of the principal; or
 - (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or the power,

if no notice in writing of the death, unsoundness of mind or revocation has been received by the Company at its registered office not less than 48 hours (or any shorter period as the directors may permit) before the commencement of the meeting, or adjourned meeting at which the instrument is used or the power is exercised.

- (b) A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

34. Where proxy is incomplete

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

35. Right of officers and advisers to attend general meeting

- (a) A secretary who is not a member is entitled to be present and, at the request of the President, to speak at any general meeting.
- (b) Any other person (whether a member or not) requested by the directors to attend any general meeting is entitled to be present and, at the request of the President, to speak at that general meeting.

36. Number of directors

- (a) The board of directors shall consist of not less than three nor more than seven directors all of whom must be natural persons.
- (b) The Company may from time to time by resolution of a two third majority of Members Present passed at a general meeting increase or reduce the number of members of the board of directors.

37. Appointment of directors

- (a) No person shall be eligible for appointment or election to the board of directors unless that person is a member of the Company.
- (b) Subject to clause 37(e) and clause 38, each director shall be appointed for a period of three years.
- (c) The election of the directors shall take place in the following manner:
 - (i) Nominations for directors shall be in writing signed on behalf of two members of the Company entitled to vote at such election and shall bear the candidate's consent endorsed on the document. Such nomination shall be lodged with the secretary at least 14 days prior to the general meeting at which the election is to take place.
 - (ii) Balloting lists shall be prepared (if necessary) containing the names of the candidates only in alphabetical order, and each member present at the annual general meeting shall be entitled to vote for any number of such candidates not exceeding the number of vacancies.

- (d) The directors shall have power at any time and from time to time to appoint any members as a director either to fill a casual vacancy or as an additional Director but the total number of directors shall not at any time exceed the number fixed in accordance with this Constitution.
- (e) Directors appointed in accordance with clause 37(d) shall:
 - (i) in the case of an additional director hold office for three years; and
 - (ii) in the case of a casual vacancy, hold office until the expiration of the term of the director that they have replaced as a casual vacancy.

38. Retirement of directors

- (a) At each annual general meeting of the Company one third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to but not exceeding one third, shall retire from office. New directors to fill the vacancies may be elected at each annual general meeting from the members of the Company. A retiring director shall be eligible for re-election.
- (b) The directors required to retire at an annual general meeting shall be those who have been longest in office since their last election, but, as between persons who became directors on the same day, those to retire shall be determined by lot unless they agree otherwise.
- (c) If upon the retirement of a director at an annual general meeting the vacated office is not filled at that annual general meeting, the retiring director shall, if offering himself for re-election and not being disqualified under the Act from holding office as a director, be deemed to have been re-elected unless at that meeting:
 - (i) it is expressly resolved not to fill the vacated office; or
 - (ii) a resolution for the re-election of that director is put and lost.

39. Removal of directors

- (a) The Company may by special resolution of which special notice has been given remove any director before the expiration of that director's period of office, and may resolve to appoint another person to replace a director so removed.
- (b) A person appointed in accordance with clause 39(a) shall hold office only for such periods as the existing director is unavailable. The temporary director shall have full voting rights.

40. Vacation of office

The office of a director shall become vacant if the director:

- (a) ceases to be a member of the Company;
- (b) ceases to be a director by virtue of the Act;
- (c) is prohibited from being a director of a company by reason of any order made under the Act;

- (d) resigns her or his office by notice in writing given to the Company;
- (e) becomes bankrupt or makes any arrangement or composition with her or his creditors generally or becomes of unsound mind or a person whose estate is liable to be dealt with under the law relating to mental health;
- (f) holds any office of profit under the Company; or
- (g) dies.

41. Alternate directors

- (a) A director may, with the approval of a majority of the other directors (if any), appoint another director or member of the Company to be an alternate director in that director's place during any period that that director thinks fit.
- (b) An alternate director is entitled to notice of meetings of the directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in the director's stead.
- (c) An alternate director may exercise any powers which the appointor may exercise. The exercise of any power by the alternate director (including signing a document) shall be taken to be the exercise of the power by the appointor. The exercise of any power by the alternate director shall be as agent of the Company and not as agent of the appointor. Where the alternate is another director, that director shall be entitled to cast a deliberative vote on the director's own account and on account of each person by whom the director has been appointed as an alternate director.
- (d) The appointment of an alternate director:
 - (i) may be terminated at any time by the appointor even if the period of the appointment of the alternate director has not expired; and
 - (ii) terminates automatically if the appointor vacates office as a director.
- (e) An appointment or the termination of an appointment of an alternate director shall be effected by service of a written notice signed by the director making the appointment.

42. Powers of directors

- (a) Subject to the Act and this Constitution, the business of the Company is managed by the directors, who may exercise all powers of the Company which are not, by the Act or this Constitution, required to be exercised by the Company in general meeting.
- (b) Without limiting the generality of clause 42(a), the directors may exercise all the powers of the Company:
 - (i) to borrow money, to charge any property or business of the Company;
 - (ii) to issue debentures or give any other security for a debt, liability or obligation of the Company.



43. Appointment of attorneys

- (a) The directors may, by power of attorney, appoint any person to be the attorney of the Company for the purposes, with the powers, authorities and discretions vested in or exercisable by the directors for any period and subject to any conditions as they think fit.
- (b) Any appointment under clause 43(a) may be made on terms for the protection and convenience of persons dealing with the attorney as the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

44. Negotiable instruments

All negotiable instruments of the Company and all receipts for money paid to the Company shall be executed by any two directors or in such manner as the directors may decide from time to time.

45. Accounts

- (a) The directors shall ensure that:
 - (i) proper accounts are kept with respect to all sums of money received and expended by the Company and the matter in respect of which the receipt and expenditure takes place and the assets and liabilities of the Company; and
 - (ii) audited financial accounts are prepared as at 30 June each year which comply with the Act and any other enactment, section or regulation to which the Company may from time to time be subject.
- (b) The accounts shall be kept at the office of the Company or at such other place or places as the directors thinks fit and shall always be open to inspection by any Director.
- (c) The directors shall from time to time determine in accordance with Section 42 of this Constitution at what times and places, under what conditions or regulations the accounting and other records of the Company shall be open to the inspection of members.

46. Proceedings

- (a) The board of directors may meet together for the dispatch of business and adjourn or otherwise regulate its meetings as it thinks fit.
- (b) A director may at any time, and the secretary shall on the request of two directors, convene a meeting of the board of directors.
- (c) Reasonable notice must be given to every director of the place, date and time of every meeting of the board of directors. Where any director is for the time being outside of Australia, notice need only be given to that director if contact details have been given but notice shall always be given to any alternate director in Australia whose appointment by that director is for the time being in force.

47. Meetings by technology

- (a) For the purposes of the Act, each director, on becoming a director (or on the adoption of this Constitution), consents to the use of the following technology for calling or holding a directors meeting:
- (i) video;
 - (ii) telephone;
 - (iii) electronic mail;
 - (iv) any other technology which permits each director to communicate with every other director; or
 - (v) any combination of the technologies described in paragraphs (i) to (iv).
- A director may withdraw the consent given under this clause in accordance with the Act.
- (b) Where the directors are not all in attendance at one place and are holding a meeting using technology and each director can communicate with the other directors:
- (i) the participating directors shall, for the purpose of every provision of this Constitution concerning meetings of the directors, be taken to be assembled together at a meeting and to be present at that meeting; and
 - (ii) all proceedings of those directors conducted in that manner shall be as valid and effective as if conducted at a meeting at which all of them were present.

48. Quorum at meetings

At a meeting of the directors, the number of directors whose presence is necessary to constitute a quorum is three directors entitled to vote. Unless the directors determine otherwise, the quorum need only be present at the time when the meeting proceeds to business.

49. Chairman of directors

- (a) The directors may:
- (i) elect one of their number to act as Chairman; and
 - (ii) decide the period for which the Chairman is to hold office as Chairman.
- Subject to clause 49(b), the Chairman shall act as chair of every meeting of directors.
- (b) Where a meeting of the directors is held and:
- (i) a Chairman has not been appointed pursuant to clause 49(a); or
 - (ii) the Chairman is not present within 10 minutes after the time appointed for the holding of the meeting or does not wish to chair the meeting,
- the directors present shall elect one of their number to be chair of the meeting.

50. Proceedings at meetings

- (a) Subject to this Constitution, questions arising at any meeting of the directors shall be decided by a majority of votes of the directors present and voting and any such decision shall for all purposes be deemed a decision of the directors.
- (b) In the case of an equality of votes, the chair of the meeting of directors has a casting vote in addition to the chair's deliberative vote.

51. Written resolutions

- (a) If a document:
 - (i) is sent to all those entitled to receive notice of a meeting at which a resolution could be put;
 - (ii) contains a statement that the signatories to it are in favour of that resolution;
 - (iii) the terms of the resolution are set out or identified in the document; and
 - (iv) has been signed by a majority of the directors entitled to vote on that resolution,a resolution in those terms is passed on the day on which and at the time at which the document was signed by a majority of the directors and the document has effect as a minute of the resolution.
- (b) For the purposes of clause 51(a):
 - (i) two or more separate documents containing statements in identical terms each of which is signed by one or more directors shall together be taken to constitute one document containing a statement in those terms signed by those directors at the time at which the last of those documents to be signed was signed by a director;
 - (ii) a reference to a majority of the directors does not include a reference to an alternate director whose appointor has signed the document, but an alternate director may sign the document in the place of the alternate director's appointor; and
 - (iii) a fax which is received by the Company or an agent of the Company and is sent for or on behalf of a director or alternate director shall be taken to be signed by that director or alternate director not later than the time of receipt of the fax by the Company or its agent in legible form.

52. Delegation and Committees

- (a) The directors may delegate any of their powers to committees in accordance with the Act.
- (b) Sections 46, 47, 48 and 49 apply to any committee established by the directors as if each reference in those sections to the directors was a reference to the members of the committee and each reference to a meeting of the directors was to a meeting of the committee.
- (c) The number of members whose presence at a meeting of the committee is necessary to constitute a quorum is the number determined by the directors and, if not so determined, is

two. Unless the directors determine otherwise, the quorum need to be present only at the time when the meeting proceeds to business.

- (d) The minutes of all the proceedings and decisions of every committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the directors are required by the Act to be made, entered and signed.

53. Material personal interests

- (a) A director is not disqualified by the director's office from contracting with the Company or any related body corporate of the Company in any capacity by reason of holding of the office of director.
- (b) In relation to a contract or arrangement in which a director has a material personal interest:
 - (i) the fact that the director signed the document evidencing the contract or arrangement will not in any way affect its validity;
 - (ii) a contract or arrangement, whether made by the Company or any related body corporate, may not be avoided merely because the director is a party to the contract or arrangement or otherwise interested in it; and
 - (iii) the director will not be liable to account to the Company for any profit derived in respect of the contract or arrangement merely because of the director's office or the fiduciary relationship it entails.
- (c) Subject to clause 53(d), a director who has a material personal interest in a matter that relates to the affairs of the Company must give the other directors notice of his or her interest.
- (d) A director with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:
 - (i) if all of the following conditions are met:
 - (A) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
 - (B) if a person who was not a director at the time the notice in paragraph (A) above was given is appointed as a director, the notice is given to that person; and
 - (C) the nature or extent of the interest has not materially increased above that disclosed in the notice in paragraph (A) above; or
 - (ii) if the director has given a standing notice of the nature and extent of the interest in accordance with the Act and that standing notice is still effective in relation to the interest; or
 - (iii) as otherwise permitted under the Act.
- (e) Notices of material personal interest given by directors must:
 - (i) give details of the nature and extent of the director's interest and the relation of the interest to the affairs of the Company;



- (ii) be given at a directors' meeting as soon as practicable after the director becomes aware of his or her interest in the matter; and
- (iii) be recorded in the minutes of the directors' meeting at which the notice is given.
- (f) A director who has a material personal interest in a matter that is being considered at a directors' meeting must not be present while the matter is being considered at the meeting or vote on the matter, except in the following circumstances:
 - (i) if the material personal interest is a matter that is not required to be disclosed under this Section or under the Act; or
 - (ii) if the directors who do not have a material personal interest in the matter have passed a resolution that:
 - (A) identified the director, the nature and the extent of the director's interest in the matter and its relation to the affairs of the Company; and
 - (B) states that those directors are satisfied that the interest should not disqualify the director from voting or being present; or
 - (iii) as otherwise permitted under the Act.
- (g) Nothing in this section affects the duty of a director:
 - (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the directors' duties or interests as a director, to declare at a meeting of directors, the fact and the nature, character and extent of the conflict; or
 - (ii) to comply with the Act.

54. Secretary

- (a) The directors may appoint a secretary upon such terms and conditions as to remuneration and otherwise as it thinks fit.
- (b) Subject to the terms of any employment contract, the directors may terminate the appointment of a secretary at any time.

55. Other officers

- (a) The directors may from time to time:
 - (i) create any other position in the Company with such powers and responsibilities as the directors may from time to time confer;
 - (ii) may appoint any person, whether or not a member or director, to any such position or positions; and
 - (iii) the directors may at any time terminate the appointment of a person holding such a position and may abolish the position.

56. Inspection of records

- (a) The directors may authorise a member to inspect books of the Company to the extent, at the time and places and under the conditions, the directors consider appropriate.
- (b) A member (other than a director) does not have the right to inspect any document of the Company except as provided by law or as authorised by the directors.

57. Notices generally

- (a) Any member who has not left at or sent to the registered office, a place of address or an electronic mail address (for registration in the register) at or to which all notices and documents of the Company may be served or sent is not entitled to receive any notice.
- (b) A notice may be given by the Company to any member by:
 - (i) serving it on the member personally;
 - (ii) sending it by post to the member or leaving it at the member's address as shown in the register or the address supplied by the member to the Company for the giving of notices;
 - (iii) serving it in any manner contemplated in this Section 57(b) on a member's attorney as specified by the member in a notice given under section 57(c);
 - (iv) fax to the fax number supplied by the member to the Company for the giving of notices; or
 - (v) transmitting it electronically to the electronic mail address given by the member to the Company for giving notices.
- (c) A member may, by written notice to the secretary left at or sent to the registered office, require that all notices to be given by the Company or the directors be served on the member's attorney at an address specified in the notice.
- (d) Notice to a member whose address for notices is outside Australia shall be sent by airmail, fax or electronic mail.
- (e) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected:
 - (i) in the case of a notice of a meeting, on the day after the date of its posting; and
 - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (f) Where a notice is sent by fax or electronic transmission, service of the notice is taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the day it is sent.

58. Receipt of general meeting notices

- (a) Notice of every general meeting must be given:

- (i) in the manner authorised by Section 16;
- (ii) to every member and to each director; and
- (iii) to the auditor to the Company (if any).

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

59. Indemnity

- (a) To the extent permitted by law and without limiting the powers of the Company, the Company must indemnify each person who is, or has been, a director, or secretary of the Company against any liability which results directly or indirectly from facts or circumstances relating to the person serving or having served in that capacity:
 - (i) other than:
 - (A) a liability owed to the company or a related body corporate;
 - (B) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Act; or
 - (C) a liability that is owed to someone (other than the company or a related body corporate) and did not arise out of conduct in good faith;
 - (this paragraph (i) does not apply to a liability for legal costs)
 - (ii) other than for legal costs incurred in defending an action for liability if the costs are incurred:
 - (A) in defending or resisting civil proceedings in which the person is found to have a liability for which they could not be indemnified under paragraph (i); or
 - (B) in defending or resisting criminal proceedings in which the person is found guilty; or
 - (C) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the Court to be established; or
 - (D) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

Paragraph (ii)(C) does not apply to costs incurred in responding to actions brought by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

- (b) To the extent permitted by law and without limiting the powers of the company, the directors may authorise the company to, and the company may enter into any:
 - (i) documentary indemnity in favour of; or
 - (ii) insurance policy for the benefit of,a person who is, or has been, a director, secretary, auditor, employee or other officer of the company or of a subsidiary of the company, which indemnity or insurance policy may be in

such terms as the directors approve and, in particular, may apply to acts or omissions prior to or after the time of entering into the indemnity or the policy.

- (c) The benefit of each indemnity given in Section 59(a) continues, even after its terms or the terms of this clause are modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modifications or deletion.

60. Winding up

60.1 Distribution of surplus assets

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

- (a) in the case of any property in the Public Fund, in accordance with the rules of the Public Fund; or
- (b) in the case of any property held by the Company and which is not held in the Public Fund, one or more fund, institutions, associations or bodies the objects of which are the promotion of charity and to which gifts are allowable deductions under the Tax Act.
- (c) any such fund, institution, association or body shall be determined by the members of the Company at or before the time of dissolution and, in default, by application to the Supreme Court for determination.

60.2 Limit of liability

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

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

such amount as may be required, not exceeding \$10.00.

* * * * *

Annexure

**RULES
OF
THE WOMBAT FOUNDATION
PUBLIC FUND**

1. The objective of the Fund is to support the Company's environmental purposes.
2. Members of the public are to be invited to make gifts of money or property to the Fund for the environmental purposes of the Company.
3. Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Fund.
4. A separate bank account is to be opened to deposit money donated to the Fund, including interest accrued thereon, and gifts to it are to be kept separate from other funds of the Company.
5. Receipts are to be issued in the name of the Fund and proper accounting records and procedures are to be kept and used for the Fund.
6. The Fund will be operated on a not-for-profit basis. None of the money or property accumulated by the Fund will be distributed to members of the Company apart from the payment of proper remuneration for administrative services as permitted under rule 7.
7. The Fund can be used to pay for the reasonable operating expenses of the Company including rent, stationery, salaries and wages.
8. The Fund will be administered by a committee of management who shall be responsible for all its functions including the making of investment and land deposit and acquisition decisions.
9. The committee of management shall comprise of no fewer than three persons and may include the directors. The committee will be appointed by the directors of the Company. A majority of the members of the committee are required to be "responsible persons" as defined by the Guidelines to the Register.

* * * * *

CONSENT TO TERMS OF THIS CONSTITUTION

The people named below as members consent to becoming members of the company and agree to the terms of this constitution.

Name of member

The Honourable Patrick Comben
Dr Alan Horsup
Garry Richmond

DATED: 2003

Signed by the Honourable Patrick Comben in
the presence of:

Witness Signature

Signature

Print Name

Signed by Dr Alan Horsup in the presence of:

Witness Signature

Signature

Print Name

Signed by **Garry Richmond** in the presence of:

Witness Signature

Signature

Print Name