



(DRAFT)

Constitution

of

Botanic Gardens of
Australia and New Zealand Limited

To Be Lodged at: ACT Office of Regulatory Services
255 Canberra Avenue, Fyshwick ACT 2609

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Corporations Act 2001
COMPANY LIMITED BY GUARANTEE

CONSTITUTION OF Botanic Gardens
Australia and New Zealand LIMITED

The extent permitted by law the replaceable rules in the Corporations Act shall not apply to the
Company

PRELIMINARY

1. Definitions and interpretation

1.1 In this Constitution, unless the contrary intention appears:

ACNC means the Australian Charities and Not-for-profits Commission

Auditor means the Company's auditor (if any).

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) as amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

Annual Membership Fee means the annual fee payable by a Member in accordance with rule 11.

Appointed Board Member means Board Members appointed by the Board

ATO means the Australian Taxation Office

BGANZ Ltd means Botanic Gardens Australia and New Zealand Limited Company

Botanic Garden means gardens open to the public which grow plants for public enjoyment, scientific, horticultural, conservation, or educational purposes, and which have local, national or international roles;

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

Elected Board Member means Board Member elected from Bganz membership

Business day has the same meaning as in the Corporations Act.

Chair means the person appointed as chair of the Company under rule 56.1.

Chief Executive Officer means the person for the time being appointed as chief executive officer of the Company under rule 71 (if any), where no such person holds that office, the Public Officer of the Company;

Committee means a committee established by the Board under rule 68.

Company means Botanic Gardens Australia and New Zealand Limited (ACN).

Competition and Consumer Act means the Competition and Consumer Act 2010 (Cth).

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

Corporations Act means the Corporations Act 2001 (Cth) as amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

Corporate Member means a Member being a firm, corporation or other body involved in the supply of goods or services for botanic gardens or related field

Department means the Commonwealth Department of Environment and Energy

Deputy Chair means the person appointed as deputy chair of the Company under rule 56.2.

Director term is replaced by Board Member.

Board Member term includes any person occupying the position of Board Members of the Company.

Eligible Recipient means a fund, authority or institution in Australia that:

- (a) has one or more objects or purposes similar to the Objects and that agrees to use any distribution or transfer of funds provided by the Company to further such objects or purposes;
- (b) is registered as a charity with the Australian Charities and Not-for- profits Commission; and
- (c) by law or its constituent rules, is prohibited from distributing, and does not distribute, its income and property amongst its members (either while it is operating or on winding up) to an extent at least as great as is imposed on the Company.

Electronic Address means email address or any other available mode of conveying an electronic message or document;

Financial Year means the year ending on June 30 in any given year;

General Meeting means a meeting of the Members of the Company and includes an Annual General Meeting.

Governance Policy means a policy made under this Constitution.

Honorary Member means an Ordinary Member, Corporate Member or Organisation Member that the Board or its delegate determines to be an honorary member for such period as determined by the Board or its delegate.

Individual Member means a member who is a natural person.

Institutional Member means a Member being an advocacy, special interest or community group whether or not incorporated.

In Writing means printed, typewritten and any other means of reproducing words in a visible form, including words on paper transmitted by facsimile and other electronic means;

Life Member means an Ordinary Member that the Board determines to be a life member in recognition of their longstanding and valued contribution or service in respect of the Objects.

Member means a member of the Company pursuant to rule 8.

Minister means any Commonwealth Minister responsible for environmental matters

Month means calendar month.

Objects means the objects of the Company as described in rule 4.1.

Public Fund means the public fund referred to in clause 4.1 and Schedule 2

Regional Group means a group of the Organisations from a particular geographic area established under the provisions of clause 20A

Register means the register of Members of the Company.

Registered Address means the last known address of a Member as noted in the Register.

Registered Charity means a charity that is registered under the ACNC Act.

Related body corporate has the meaning given to that term in the Corporations Act.

REO means the Register of Environmental Organisations

Representative means a representative appointed by an Organisation Member or Corporate Member under rule 8.5 (as the case may be).

Seal means the Company's common seal (if any).

Secretary means any person appointed by the Board to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of those joint secretaries.

Special Resolution means a resolution:

- (d) of which notice has been given under rule 19; and
- (e) that has been passed by at least seventy-five percent (75%) of the votes cast by members entitled to vote on the resolution.

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

1.2 In this Constitution, unless the contrary intention appears:

- (a) an expression in a rule in this Constitution has the same meaning as in a provision of the Corporations Act that deals with the same matter as the rule;
- (b) while the Company is a Registered Charity, the ACNC Act and the Corporations Act override any rule in this constitution which are inconsistent with those Acts;
- (c) if the Company is not a registered charity (even if it remains a charity), the Corporations Act overrides any rule in this constitution which is inconsistent with that Act.

1.3 In this Constitution, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) words importing natural persons include corporations;
- (c) words and expressions defined in the Corporations Act, or used in that Act and covering the same subject, have the same meaning in this Constitution; and
- (d) headings are for ease of reference only and do not affect the construction of this Constitution; and
- (e) a reference to dollar or \$ is to Australian currency.

2. Exclusion of replaceable rules

- 2.1 To the extent permitted by law, the replaceable rules in the Corporations Act shall not apply to the Company.

NATURE OF THE COMPANY

3. Structure

- 3.1 The name of the Company is Botanic Gardens Australia and New Zealand Limited.
- 3.2 The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.
- 3.3 The liability of Members is limited to the contribution under rule 83.1.
- 3.4 Upon the adoption of this constitution, the Company will apply to the ATO and the ACNC for the endorsement of the Company as an income tax exempt charity for advancing the natural environment.
- 3.5 The public will be invited to contribute gifts of money or property to the Company.

4. Objects

- 4.1 The Company's principal purpose is to:
 - (a) protect and enhance a significant aspect of the natural environment;

- (b) provide information and education in relation to a significant aspect of the natural environment;
 - (c) operate as a charity endorsed by the ACNC; and
 - (d) establish and maintain a Public Fund.
- 4.2 The Company is in particular, without limiting the generality of clause 4.1, established for the purpose of:
- (a) the protection, conservation and enhancement of plants and their ecosystems; and
 - (b) the provision of information and education and undertaking research about plants and plant communities, through working with botanic gardens and other institutions to achieve the following objects:
 - (i) supporting and carrying out research into the diversity, conservation and ecosystem values of plants and their communities;
 - (ii) supporting the ex situ and in situ conservation of threatened plants, including through the development and use of seed banks;
 - (iii) promoting knowledge sharing about plants and plant communities;
 - (iv) promoting education about plants and plant communities; and
 - (v) providing a forum to enhance and promote the botanical, horticultural, educational and environmental work of botanic gardens.
- 4.3 The Company will achieve the goals set out in this clause 4 by creating and coordinating a viable, dynamic and resilient network of botanic gardens in Australia and New Zealand that is focused on establishing, promoting and supporting programs, activities and educational initiatives that protect and enhance the natural environment.
- 4.4 In support of the objects set out in this clause 4, the Company will ensure that a leadership network is established for botanic gardens in Australia and New Zealand that is inclusive, skilled, committed and collaborative, and understood, valued and supported by government, business, and philanthropic and other organisations.
- 4.5 The Company will raise funds in support of the objects set out in this clause 4.

5. Powers

- 5.1 The Company shall have the rights, powers and privileges of a natural person, together with the powers in section 124(1) of the Corporations Act, which may only be used to:
- (a) pursue, promote or carry out the purposes or Objects of the Company as set out in this Constitution; and
 - (b) do all things incidental or convenient in relation to the exercise of power under paragraph (a).

6. Income and property

- 6.1 The income and property of the Company shall only be applied towards promotion of the purposes and Objects of the Company as set out in this Constitution.
- 6.2 No income or property of the Company shall be paid or transferred directly or indirectly to any Member except for payment in good faith to any Member:
- (a) for services actually rendered to the Company whether as an employee or otherwise;
 - (b) for goods supplied to the Company in the ordinary and usual course of business;
 - (c) of interest or like amounts, at a rate not exceeding the current overdraft rates of the Company's bank, on money borrowed from any Member;
 - (d) of reasonable and proper rent or like amounts for premises demised or let by any Member;
 - (e) for any out-of-pocket expenses incurred by the Member on behalf of the Company.

THE CONSTITUTION

7. Amending the Constitution

- 7.1 Subject to rule 7.2, the Members may amend, alter, modify or repeal this Constitution, or adopt a new constitution, by passing a Special Resolution.
- 7.2 The Members must not pass a Special Resolution that adopts a new constitution or amends, alters, modifies this Constitution if passing it causes the Company to no longer be a charity.
- 7.3 The ATO and the ACNC must be notified of any changes to this constitution or rules that affect the Company's objects, responsible persons, dissolution or its winding up provisions.

MEMBERSHIP

8. Members

- 8.1 The number of Members with which the Company proposes to be registered is unlimited.
- 8.2 The Members of the Company are:
- (a) Institutions (eg Botanic Gardens and Arboreta, other gardens) which are the Members of the Company as at the date of adoption of this Constitution; and
 - (b) any other individual persons, corporations or organisations which are admitted to membership in accordance with this Constitution,

subject to those persons, corporations or institutions ceasing to be a Member under rule 12.

8.3 No employee or officer of the Company shall be admitted as a Member of the Company.

8.4 Members of the Company shall fall into one of the following categories:

- (a) Institutional (botanic gardens, arboreta, other gardens)
- (b) Individual
- (c) Corporate
- (d) Associate (eg Friends Groups) and such other category of Members as may be created by the Board.

8.5 Upon becoming a Member each Corporate, Institution, and Associate Member shall forthwith appoint a Representative in accordance with rule 15.1(a).

8.6 The rights and privileges of a Member are personal to that Member and are not transferable by the Member's own act or by operation of law.

9. Register of Members

9.1 The Company must establish and maintain a Register of Members. The Register must be kept by the Secretary and must contain:

- (a) for each current Member:
 - (i) name;
 - (ii) address;
 - (iii) any alternative address nominated by the Member for the service of notices;
 - (iv) date the Member was entered on to the Register; and
 - (v) such other information as may be desirable to classify or identify Members.
- (b) for each person who ceased being a Member in the last 7 years:
 - (i) name;
 - (ii) address;
 - (iii) any alternative address nominated by the Member for the service of notices; and
 - (iv) dates the membership started and ended.

10. Admission

10.1 Every application for membership of the Company must be:

- (a) in writing in a form approved by the Board;
- (b) signed by the applicant;
- (c) accompanied by such documents or evidence as to qualification for membership as the Board determines,

and must include:

- (d) a consent to become a Member; and
- (e) an agreement to be bound by the terms of the Constitution.

10.2 The Secretary or Chief Executive Officer must consider an application for membership of the Company as soon as practicable after its receipt and determine, in accordance with this Constitution or otherwise at their absolute discretion, whether to accept or reject the application.

10.3 If the Secretary or Chief Executive Officer determines to reject an application, then:

- (a) it must seek approval of the Board; and
- (b) it need give no reason to the applicant for the rejection of an application.

10.4 If an applicant is accepted for admission to membership:

- (a) the Secretary or Chief Executive Officer must notify the applicant in writing of admission; and
- (b) the name and details of the Member must be entered in the Member Register.

10.5 If an applicant is rejected for admission to membership the Secretary or Chief Executive Officer shall forthwith send to the applicant written notice of rejection together with a refund of any Annual Membership Fee paid by the applicant.

10.6 The Board retains the power to review any decision made by the Secretary in respect of the admission or rejection of any application for membership.

10.7 The Board may from time to time invite any person, corporation or institution to apply for membership of the Company if the Board is of the opinion that the membership of that person, corporation or institution would assist the Company to pursue, promote and carry out its purposes and Objects.

11. Membership Fees

11.1 Each Member (other than Life Members and Honorary Members) undertakes to pay the Annual Membership Fee as determined by the Board from time to time. The Board may determine different Annual Membership Fees for different categories of Members or waive the Annual Membership Fee for any Member on the grounds of financial hardship or other compassionate grounds.

11.2 The Annual Membership Fee shall become due and payable in advance on the 1st day of July every year, or such other date as determined by the Board.

11.3 The Board may also determine from time to time an amount payable by an applicant for membership or any other amount to be paid by each Member, or any category of Members, whether of a recurrent or any other nature.

12. Ceasing to be a member

12.1 A Member's membership of the Company will cease:

- (a) if the Member gives the Secretary written notice of resignation, which is deemed to take effect from the date of receipt of the notice or such later date as is specified in the notice; or
- (b) if the Member is expelled under rule 13; or
- (c) if the Member fails to renew its membership and pay its Annual Membership Fee within three months of the due date for payment; or
- (d) in the case of a Member which is a natural person, if the Member:
 - (i) dies;
 - (ii) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
 - (iii) becomes bankrupt or compounds with his or her creditors or assigns his estate for the benefit of his or her creditors; or
 - (iv) is or becomes an employee or officer of the Company; or
 - (v) in the case of a Member which is a corporation or organisation, if the Member is wound up or is otherwise dissolved or deregistered.

12.2 Any Member ceasing to be a Member:

- (i) will not be entitled to any refund (or part refund) of its Annual Membership Fee; and
- (ii) will remain liable for and will pay the Company all fees and moneys which are due as at the date of ceasing to be a Member.

13. Expulsion of Members

13.1 In accordance with this rule 13, the Board may resolve to warn, suspend or expel a Member from the Company if the Board considers that:

- (a) the Member has breached this Constitution; or
- (b) the Member's behaviour or conduct is causing, has caused, or is likely to cause harm to the Company or is unbecoming of a Member or is prejudicial to the interests of the Company.

- 13.2 Before the Board passes any resolution under clause 13.1, the Member must be given a chance to explain or defend themselves.
- 13.3 After considering any explanation under clause 13.2, the Board may:
- (a) take no further action;
 - (b) warn the Member;
 - (c) suspend the Member's rights as a member for a period of no more than 12 months;
 - (d) expel the Member;
 - (e) refer the decision to an unbiased, independent person on conditions that the Board considers appropriate (however, the person can only make a decision that the Board Members could have made under this clause); or
 - (f) require the matter to be determined at a General Meeting.
- 13.4 The Board cannot fine a member.
- 13.5 The Secretary must give written notice to the Member of the decision under clause 13.3 as soon as possible.
- 13.6 There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause.
- 13.7 The Board may adopt a code of conduct for Members and periodically review and amend the code of conduct.

14. Powers of attorney

- 14.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the attorney to the Company for notation.
- 14.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- 14.3 The Company may ask for any evidence it thinks appropriate that proves the power of attorney is effective and continues to be in force.

15. Representatives

- 15.1 Any corporation, associate member or institution which is a Member may by written notice to the Secretary:
- (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
 - (b) remove a Representative.

15.2 A Representative is entitled to:

- (a) exercise at a General Meeting all the powers which the corporation or institution which appointed him or her could exercise if it were a natural person;
- (b) stand for election as an office bearer or Board Member; and
- (c) be counted towards a quorum on the basis that the Corporate Member or Institution Member is to be considered personally present at a General Meeting by its Representative.

15.3 A certificate executed in accordance with the Corporations Act is rebuttable evidence of the appointment of the Representative, any restrictions on the Representative's powers or of the revocation of the appointment of the Representative.

15.4 The chairperson of a General Meeting may permit a person claiming to be a Representative to exercise his or her powers even if he or she has not produced a certificate evidencing his or her appointment, or may allow the Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the chairperson of the General Meeting his or her status as a Representative within a period prescribed by the chairperson of the General Meeting.

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

GENERAL MEETINGS

16. Annual General Meeting

16.1 A general meeting called the "Annual General Meeting" shall be held at least once every calendar year, within five (5) months after the end of the Company's financial year.

16.2 All meetings of Members, including the Annual General Meeting, shall be called General Meetings.

17. General Meetings Called by Board

17.1 The Board may, at any time, call a General Meeting.

17.2 If Members with at least five percent (5%) of the votes that may be cast at a General Meeting make a written request to the Company for a General Meeting to be held, the Board must:

- (a) within twenty-one (21) days of the Members' request, give all Members notice of a general meeting, and
- (b) hold the General Meeting within two (2) months of the Members' request.

17.3 The percentage of votes that Members have (in rule 17.2) is to be worked out as at midnight before the Members request the meeting.

17.4 The Members who make the request for a General Meeting must:

- (a) state in the request any resolution to be proposed at the meeting;
- (b) sign the request, and
- (c) give the request to the Company.

17.5 Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.

18. General Meetings Called by Members

18.1 If the Board does not call the meeting within twenty-one (21) days of being requested under rule 17.2, fifty percent (50%) or more of the Members who made the request may call and arrange to hold a General Meeting.

18.2 To call and hold a meeting under rule 18, the Members must:

- (a) as far as possible, follow the procedures for General Meetings set out in this Constitution;
- (b) call the meeting using the list of Members on the Register, which the Company must provide to the Members making the request at no cost; and
- (c) hold the General Meeting within three (3) months after the request was given to the Company.

19. Notice of General Meeting

19.1 Notice of a General Meeting must be provided in writing at least twenty-one (21) days before the meeting, unless shorter notice is permitted by rule 19.2.

19.2 Subject to rule 19.3, notice of a meeting may be provided less than 21 days before the meeting if:

- (a) for an Annual General Meeting, all the Members entitled to attend and vote at the Annual General Meeting agree beforehand; or
- (b) for any other General Meeting, Members with at least seventy-five percent (75%) of the votes that may be cast at the meeting agree beforehand.

19.3 Notice of a meeting cannot be provided less than twenty-one (21) days before the meeting if a resolution will be moved to:

- (a) remove a Board Members;
- (b) appoint a Board Members in order to replace a Board Members who was removed;
or
- (c) remove an Auditor.

19.4 A notice calling a General Meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this in

accordance with rule 20); and

- (b) state the general nature of the business to be transacted at the meeting; and
- (c) if a Special Resolution is to be proposed at the meeting – set out an intention to propose the Special Resolution and state the resolution; and
- (d) if a Member is entitled to appoint a proxy – contain a statement setting out the following information:
 - (i) that the Member has a right to appoint a proxy;
 - (ii) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting;
 - (iii) the proxy form must be delivered to the Company at least forty- eight (48) hours before the meeting; and
 - (iv) that a Member who is entitled to cast two (2) or more votes may appoint two (2) proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

19.5 Even if these items are not set out in the notice of meeting, the business of an Annual General Meeting may include:

- (a) a review of the Company's activities;
- (b) a review of the Company's finances;
- (c) any auditor's report;
- (d) the election of Board Members, and
- (e) the appointment and payment of auditors, if any.

19.6 The Board may postpone or cancel any General Meeting whenever they think fit (other than a meeting convened as the result of a request under rule 17.2). The Board must give notice of the postponement or cancellation to all persons entitled to receive notices from the Company.

19.7 The failure or accidental omission to send a notice of a General Meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the General Meeting.

20. Holding General Meetings

20.1 A General Meeting may be held at two (2) or more venues using any available technology that gives the Members as a whole a reasonable opportunity to participate.

20.2 The Members need not all be physically present in the same place for a General Meeting to be held.

20.3 A General Meeting held solely or partly using any available technology is treated as being

held at the place at which the greatest number of Members present at the meeting is located or, if there is an equal number of Members located at two (2) or more places, at the place where the chairperson of the General Meeting is located.

20.4 The following provisions apply to a meeting that uses technology:

- (a) each of the Members taking part in the meeting must be able to hear and be heard by each of the other Members taking part in the meeting; and
- (b) a Member who participates in a meeting held in accordance with this rule 20 is taken:
 - (i) for all purposes, to be present in person at that meeting; and
 - (ii) if the Member is entitled to vote and votes at that meeting, to have voted in person;

20.5 For the purposes of this rule 20, a reference to a Member shall be taken to include any proxy, attorney or Representative appointed by a Member to attend the General Meeting on behalf of the Member.

21. Business of Annual General Meetings

21.1 The business of an Annual General Meeting will include the following:

- (a) to elect the Elected Board Members in accordance with this Constitution;
- (b) to receive and consider the Company's financial statements and the reports of the Board and of the Auditor of the Company; and
- (c) to transact any other business which, under the Corporations Act (if applicable) or this Constitution, is required to be transacted at any Annual General Meeting and any business which is brought under
- (d) consideration by any reports of the Board issued with the notice convening the meeting.

22. Auditor's right to attend meetings

22.1 The Auditor is entitled to attend any General Meeting and to be heard by the Members on any part of the business of the meeting which concerns him or her as Auditor.

22.2 The Company must give the Auditor any communications relating to the General Meeting that a Member of the Company is entitled to receive.

MEMBERS' RESOLUTIONS

23. Members' Resolutions and Statements

- 23.1 Members with at least five percent (5%) of the votes that may be cast on a resolution may give:
- (a) written notice to the Company of a resolution they propose to move at a General Meeting (members' resolution); and/or
 - (b) a written request to the Company that the Company give all of its Members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (members' statement).
- 23.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.
- 23.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the Members making the request.
- 23.4 Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.
- 23.5 The percentage of votes that Members have (as described in rule 23.1) is to be worked out as at midnight before the request or notice is given to the Company.
- 23.6 If the Company has been given notice of a members' resolution under rule 23.1(a), the resolution must be considered at the next General Meeting held more than two (2) months after the notice is given.
- 23.7 This rule 23 does not limit any other right that a Member has to propose a resolution at a General Meeting.
- 23.8 If the Company has been given a notice or request under rule 23.1:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to Members with a notice of meeting, it must do so at the Company's cost; or
 - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to Members with a notice of meeting, then the Members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving Members notice of the proposed members' resolution or a copy of the members' statement. However, at a General Meeting, the Members may pass a resolution that the Company will pay these expenses.
- 23.9 The Company does not need to send the notice of proposed members' resolution or a copy of the members' statement to Members if:
- (a) it is more than 1000 words long;
 - (b) the Board consider it may be defamatory;
 - (c) rule 23.8(b) applies, and the Members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the

notice of the proposed members' resolution or a copy of the members' statement to Members; or

- (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the Members.

24. Circular Resolutions of Members

24.1 Subject to rule 24.3, the Board may put a resolution to the Members to pass a resolution without a General Meeting being held (a circular resolution).

24.2 The Board must notify the Auditor as soon as possible that a circular resolution has or will be put to Members and set out the wording of the resolution.

24.3 Circular resolutions cannot be used:

- (a) for a resolution to remove an Auditor, appoint *a Board Members* or remove *a Board Members*;
- (b) for passing a Special Resolution; or
- (c) where the Corporations Act or this Constitution requires a meeting to be held.

24.4 A circular resolution is passed if all the Members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in rule and rule 24.6.

24.5 Members may sign:

- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
- (b) separate copies of that document, as long as the wording is the same in each copy.

24.6 The Company may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

PROCEEDINGS AT GENERAL MEETINGS

25. Member

25.1 In rules 17.2, 18, 20, 26, 29 and 33, 'Member' includes a Member present in person or by proxy, attorney or Representative.

26. Quorum

26.1 No business may be transacted at a General Meeting unless a quorum of Members is present when the meeting proceeds to business.

26.2 A quorum of Members is five percent (5%) of the Members or twenty (15) Members, whichever is the lesser number, present for the whole meeting.

26.3 If a quorum is not present within thirty (30) minutes after the time appointed for a General Meeting:

- (a) if the General Meeting was called on the requisition of Members, it is automatically dissolved; or
- (b) in any other case:
 - (i) it will stand adjourned to the same time and place seven (7) days after the meeting, or to another day, time and place determined by the Board; and
 - (ii) if at the adjourned General Meeting a quorum is not present within thirty (30) minutes after the time appointed for the General Meeting, the Members present (being not less than two (2)) shall constitute a quorum.

27. Chairperson

27.1 The Chair, or in the Chair's absence the Deputy Chair, will be the chairperson at every General Meeting.

27.2 The Board Members present may elect a chairperson if:

- (a) there is no Chair or Deputy Chair; or
- (b) neither the Chair nor Deputy Chair are present within fifteen (15) minutes after the time appointed for holding the General Meeting; or
- (c) the Chair and Deputy Chair are unwilling to act as chairperson of the General Meeting.

27.3 If no election is made under rule 27.2, then

- (a) the Members may elect one of the Board Members present as chairperson; or
- (b) if no Board Members is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.

27.4 If there is a dispute at a General Meeting about a question of procedure, the chairperson may determine the question.

28. Adjournment

28.1 The chairperson of a General Meeting at which a quorum is present:

- (a) in his or her discretion may adjourn the General Meeting with the meeting's consent; and
- (b) must adjourn the General Meeting if a majority of Members present directs him or her to do so.

28.2 An adjourned General Meeting may take place at a different venue to the initial meeting.

28.3 The only business that can be transacted at an adjourned General Meeting is the unfinished business of the initial General Meeting.

28.4 Notice of an adjourned General Meeting need not be given in accordance with rule 19.4 unless the General Meeting has been adjourned for more than twenty-one (21) days.

29. Decision on questions

29.1 Unless specified otherwise in this Constitution and subject to the provisions of the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.

29.2 A resolution put to the vote of a General Meeting is decided on a show of hands, unless a poll is demanded either before or on the declaration of the result of the show of hands by:

- (a) the chairperson;
- (b) at least five (5) Members entitled to vote on the resolution; or
- (c) Members with at least five percent (5%) of the votes that may be cast on the resolution on a poll.

29.3 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

29.4 Unless a poll is demanded:

- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority or lost; and
- (b) an entry to that effect in the minutes of the meeting,

are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

29.5 The demand for a poll may be withdrawn.

29.6 A decision of a General Meeting may not be impeached or invalidated on the ground that a person voting at the General Meeting was not entitled to do so.

30. Taking a poll

30.1 A poll will be taken when and in the manner that the chairperson directs.

30.2 The result of the poll will be the resolution of the General Meeting at which the poll was demanded.

30.3 The chairperson may determine any dispute about the admission or rejection of a vote.

30.4 The chairperson's determination, if made in good faith, will be final and conclusive.

30.5 A poll demanded on the election of the chairperson or the adjournment of a General Meeting must be taken immediately.

30.6 After a poll has been demanded at a General Meeting, the General Meeting may continue for the transaction of business other than the question on which the poll was demanded.

31. Offensive material

31.1 A person may be refused admission to, or required to leave and not return to, a General Meeting if the person is in possession of any:

- (a) electronic or recording device;
- (b) placard or banner; or
- (c) other article,

which the chairperson considers to be dangerous, offensive or liable to cause disruption.

32. Electronic voting

32.1 Voting by electronic communication at General Meetings may be permitted from time to time in such instances as the Board may determine and shall be held in accordance with procedures prescribed by the Board.

VOTES OF MEMBERS**33. Entitlement to vote**

33.1 Subject to this Constitution:

- (a) An Institution, Corporate, or Associate member must designate a person to represent them in the affairs of the Company
- (b) Representative of such members have the right to attend and to speak at general meetings of the Company.
- (c) Representatives of Institutional members have the right to vote at general meetings of the Company.
- (d) subject to rule 38.1(b), on a show of hands every Institution Member has one vote; and
- (e) on a poll every Institutional Member has one vote.

34. Casting vote of chairperson

34.1 The chairperson has a casting vote on a show of hands and on a poll in addition to the chairperson's votes as a Member, proxy, attorney or Representative.

35. Objections

35.1 An objection to the qualification of a voter may only be raised at the General Meeting or adjourned General Meeting at which the voter tendered its vote.

- 35.2 An objection must be referred to the chairperson of the General Meeting, whose decision is final.
- 35.3 A vote which the chairperson does not disallow pursuant to an objection is valid for all purposes.

36. Election of Board Members

- 36.1 Elections for Elected Board Member positions shall be by a 'first past the post' ballot in accordance with this rule 36 at the relevant General Meeting on papers prepared by the Chief Executive Officer as follows:
- 36.2 where the number of nominees received for Elected Board Member positions is equal to or less than the number of Elected Board Member positions to be filled:
- (i) the nominees will be deemed to be elected, subject to a separate resolution being passed in favour of each individual nominee; and
 - (ii) any remaining positions, including any positions for which an ordinary resolution fails to pass in favour of a nominee, will be deemed a casual vacancy; or
- 36.3 in all other cases, a separate ballot will be conducted for each separate Elected Board Member position to be filled, with the eligible nominee who receives the highest number of votes to be elected to fill that Elected Board Member position. If two or more nominees receive the highest number of votes a further ballot will be conducted amongst only those tied nominees, with the nominee who receives the highest number of votes elected. This process will be repeated if there is a further tie amongst the nominees receiving the highest number of votes, until only two nominees remain. If there is a further tie where there are only two nominees in the ballot, the Chief Executive Officer will determine the successful nominee by lot.

PROXIES

37. Appointment of proxy

- 37.1 A Member may appoint a person as the Member's proxy to attend and vote for the Member at a General Meeting.
- 37.2 A proxy must be a Member.

38. Rights of proxies

- 38.1 A proxy appointed to attend and vote for a Member has the same rights as the Member:
- (a) to attend and speak at the meeting;
 - (b) to vote (but only to the extent allowed by the appointment) provided that a proxy is not entitled to vote on a show of hands; and
 - (c) to demand or join in a demand for a poll.

38.2 A proxy may vote or abstain as he or she chooses except to the extent that an appointment of the proxy indicates the manner in which the proxy will vote on any resolution. The proxy must vote or abstain on a poll in accordance with any instructions on the appointment.

38.3 A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.

39. Instrument appointing proxy

39.1 An appointment of a proxy is valid if it is signed or otherwise authenticated in a manner prescribed under the Corporations Act by the Member making the appointment and contains the following information:

- (a) the Member's name and address;
- (b) the Company's name;
- (c) the proxy's name or the name of the office held by the proxy; and
- (d) the meetings at which the appointment may be used.

39.2 A proxy's appointment is valid at an adjourned General Meeting.

39.3 An appointment may be a standing one.

39.4 An undated appointment is taken to have been dated on the day it is given to the Company.

39.5 An appointment may specify the way the proxy is to vote on a particular resolution.

39.6 A later appointment revokes an earlier one.

40. Lodgement of proxy

40.1 The written appointment of a proxy must be deposited at the Company's registered office, or another address nominated by the Company, not less than forty-eight (48) hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:

- (a) the time for holding the General Meeting or adjourned General Meeting at which the appointee proposes to vote; or
- (b) the taking of a poll on which the appointee proposes to vote.

40.2 If the appointment purports to be executed under a power of attorney or other authority, then the original document, or an office copy or a notarially certified copy of it, must be deposited with the appointment.

41. Validity

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

- (a) died;

- (b) became of unsound mind; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind, or revocation was received at the Company's registered office before the relevant General Meeting or adjourned General Meeting.

Board Members (DIRECTORS)

42. Number of Board Members (Directors)

- 42.1 There must be no fewer than five (5) Board Members and not more than nine (9) Board Members
- 42.2 The Company may by resolution in General Meeting increase or reduce the minimum or maximum number of Board Members, provided that the minimum number of Board Members may not be reduced below five (5).

43. Composition of the Board

- 43.1 Subject to rule 42, not more than:
 - (a) four (4) Elected Board Members are to be elected by Members under rule 49 (Elected Board Member); and
 - (b) five (5) Appointed Board Members are to be appointed under rule 52 (Appointed Board Members).
- 43.2 Only Institutional Members can nominate Elected Board Members for election subject to the following conditions:
 - (a) The Board must be comprised of Board Members, at least 50% of which at any time are Members of the Company;
 - (b) For the four (4) Elected Board Member position, there is a maximum of 50% appointed from Australian Capital City Botanic Gardens;
 - (c) For Elected Board Members, there must be at least 1 New Zealand member; and
 - (d) To avoid any doubt, though not preferred, more than one Board Member (including Elected Board Members) can come from the same State, Territory or Garden.

44. Initial Board

- 44.1 Notwithstanding any other rule in this Constitution, upon the adoption of this Constitution:
 - (a) there shall be an Initial Board of up to nine (9) Board Members (Initial Board Members);
 - (b) the Initial Board Members will be the persons specified in Item 1 Schedule 1;

- (c) the Initial Board Members will hold office for the applicable term specified in Item 2 of Schedule 1, and retire upon the expiration of that term; and
- (d) the Initial Board Members will be eligible for election or appointment as a Board Member as specified in Item 3 of Schedule 1.

45. Eligibility

- 45.1 To be eligible to be elected or appointed as a Board Member, and to continue to hold office as a Board Member, a Board Member:
- (a) must give the Company their signed consent to act as a Board Member of the Company;
 - (b) must not be ineligible to be a Board Member under this Constitution, the Corporations Act or the ACNC Act; and
 - (c) must not be an employee of the Company.

46. Nomination for election of Elected Board Members

- 46.1 Board Members can only be nominated by BGANZ Members – including Appointed and Elected Board Member.
- 46.2 At least forty-five (45) days prior to the proposed date of the Annual General Meeting at which a resolution or resolutions will be proposed to fill a vacancy in an Elected Board Member position, the Chief Executive Officer will request from Members nominations (which comply with this rule) for elections to positions falling vacant, which must be received no less than twenty-eight (28) days prior to the Annual General Meeting.
- 46.3 Any Member, Board Member or Committee may nominate a person to fill a vacancy in an Elected Board Member position that is to be the subject of an election at the next Annual General Meeting.
- 46.4 The nomination must:
- (a) be in the form required by the Board; and
 - (b) signed by the nominator and nominee.
- 46.5 A nomination may be subject to review and approval by a Committee established by the Board under rule 68 to assess all nominees for Board Member vacancies.

47. Term of Office of Board Members generally

- 47.1 Subject to rules 49 and 50, an Elected Board Member will hold office for a term of two (2) years with the right to re-nominate for two (2) more terms of two (2) years each.
- 47.2 Subject to rules 50 and 54, an Appointed Board Member hold office for a two (2) year term and are then able to be reappointed for two (2) more terms of two (2) years each by way of resolution of the other Board Members, or on such other terms as the Board determines.

47.3 The Chair and Deputy Chair can hold their respective position for a term of two (2) years and then a further period of two (2) years, subject to approval or any direction by the Board.

48. Office held until end of meeting

48.1 A retiring Elected Board Member holds office until the end of the meeting at which that Elected Board Member retires but, subject to the requirement of this Constitution, including rule 50, is eligible for re-election or appointment as Appointed Board Members.

49. Elected Board Members elected at an Annual General Meeting

49.1 At an Annual General Meeting:

- (a) at which an Elected Board Member retires; or
- (b) at the commencement of which there is a vacancy in the office of an Elected Board Member,

there will be a vote of the Members conducted in accordance with rule 36 to fill the vacancy by electing someone to that office.

49.2 Subject to rules 50 and 54, an Elected Board Member elected under rule 49.1(a) takes office at the end of the meeting at which they are elected for the term specified in rule 47.1.

49.3 An Elected Board Member elected under rule 49.1(b) is elected for the remainder of the term of office for the position that they are filling.

50. Maximum term of office for Board Members

50.1 For the purpose of rule 50.1, a service:

- (a) by a person filling a casual vacancy in an Elected Board Members position under rules 51.2 for any period will not be treated as a term;
- (b) by a person in a Appointed Board Members position under rule 52 for any period will be treated as a term; and
- (c) by a First Board Members prior to retirement in accordance with rule 44.1(c) will not be treated as or count as part of a term.

50.2 A Board Members who has served a maximum term in accordance with rule 47.1 shall not be eligible to be a Board Member for two (2) years following the completion of their maximum term.

51. Casual vacancy in ranks of Elected Board Members

51.1 The Board may at any time appoint a person to fill a casual vacancy (as defined in rule 55) in the rank of the Member-Elected Board Members.

51.2 A person appointed under rule 51.1 holds office until the next Annual General Meeting at

which time the office becomes vacant for the purposes of rule 49.1(b) and the person can, subject to this Constitution, offer themselves for election.

52. Board-Appointed Board Members

- 52.1 In addition to the Elected Board Members, the Board may themselves appoint up to five (5) persons to be Board Members because of their skills, experience or expertise. These persons will be known as the “Board-Appointed Board Members”.
- 52.2 The proposed appointment of a person as a Board-Appointed Board Member may be subject to review and recommendation by a Committee established by the Board under rule 68 and specifically 68.6 to assess all nominees for Board Member vacancies. The role of the Committee may include identifying candidates to fill Board Member vacancies having regard to the particular skills, experience or expertise required on the Board to govern the Company’s core business or advance the Company’s vision, strategies and projects.
- 52.3 Subject to this Constitution, the Board may at any time appoint a person to fill a casual vacancy (as defined in rule 55) in the rank of the Board-Appointed Board Members on whatever terms the Board decide.

53. Remuneration of Board Members

- 53.1 Board Members may not be remunerated for their services as Board Members except for the purposes of rule 53.2.
- 53.2 With the approval of the Board and subject to the Corporations Act, a Board Member may be paid be for:
- (a) reasonable out of pocket expenses incurred by the Board Member in the performance of any duty as Board Member of the Company where the amount payable does not exceed an amount previously approved by the Board;
 - (b) goods or services supplied to the Company by the Board Member in a professional or technical capacity, other than in the capacity as Board Member, where:
 - (i) the provision of the service or goods has the prior approval of the Board; and
 - (ii) the amount payable is not more than an amount which commercially would be reasonable payment for the service;
 - (c) indemnification of, or payment of premiums on contracts of insurance for, the Board Member to the extent permitted by law and this Constitution.

54. Removal of Board Members

- 54.1 Subject to rule 42, the Members may by resolution remove any Board Member from office in accordance with the Corporations Act.
- 54.2 Unless otherwise resolved at a General Meeting, a Board Member removed in accordance with rule 54.1 cannot be re-appointed as a Board Member within three (3) years of their removal.

55. Vacation of office

55.1 The office of a Board Member immediately becomes vacant if the Board Member:

- (a) resigns by notice in writing to the Company;
- (b) is removed in accordance with rule 54;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) becomes bankrupt or makes any arrangement or composition with his or her creditors;
- (e) dies;
- (f) stops being a member of the Company;
- (g) is a Representative of a Member, and that Member stops being a Member;
- (h) is a Representative of a Member, and that Member notifies the Company that the Representative is no longer a Representative;
- (i) fails to attend three (3) consecutive meetings of the Board without approval from the Board;
- (j) becomes ineligible to be a Board Member under the Corporations Act or becomes prohibited from being a Board Member of a company by reason of any order or disqualification made under the Corporations Act;
- (k) becomes ineligible to be a Board Member under the ACNC Act while the Company is a Registered Entity.
- (l) ceases to be a Board Member by virtue of the Corporations Act.

56. Chair and Deputy Chair

56.1 The Board shall elect one of the Board Member to the position of Chair of the Company.

56.2 The Board may elect one of the other Board Members to the position of Deputy Chair of the Company.

57. Alternate Board Member

57.1 The Board cannot appoint an alternate.

POWERS AND DUTIES OF BOARD MEMBERS

58. Powers of Board

58.1 The business of the Company is managed by the Board who may exercise all powers of

the Company that this Constitution and the Corporations Act do not require to be exercised by the Company at a General Meeting.

58.2 The Board must decide on the responsible financial management of the Company including:

- (a) any suitable written delegations of power under rule 58.3; and
- (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

58.3 The Board may delegate any of their powers and functions to a Committee, a Board Member, an employee of the Company (such as a Chief Executive Officer) or any other person, as they consider appropriate.

58.4 The delegation must be recorded in the Company's minute book.

58.5 Without limiting the generality of rule 58.1, the Board may exercise all the powers of the Company to:

- (a) borrow money;
- (b) mortgage or charge all or any part of its property
- (c) issue debentures or give any other security for any debt liability, or obligation of the Company;
- (d) commercialise, licence or otherwise exploit any intellectual property of the Company;
- (e) acquire, sell, mortgage, lease or otherwise dispose or deal with real property;
- (f) acquire or dispose of any interest in an entity;
- (g) merge or amalgamate with an entity,

provided it does not cause the Company to no longer be a charity.

59. Duties of Board Members

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

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Board Member of the Company;
- (b) to act in good faith in the best interests of the Company and to further the Objects of the Company set out in rule 4;
- (c) not to misuse their position as a Board Member;
- (d) not to misuse information they gain in their role as a Board Member;

- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in rule 65
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

60. Governance Policies

- 60.1 The Board may from time to time make governance policies which in their opinion are necessary or desirable for the control, administration and management of the Company's affairs and may amend, repeal and replace those policies.
- 60.2 Without limiting the generality of the foregoing, the Board shall adopt governance policies and procedures for the general conduct and management of business of the Board and regulation of the business of Committees in light of the general principles of good governance.
- 60.3 Where there is any inconsistency between this Constitution and a Governance Policy, the Constitution shall prevail to the extent of that inconsistency.

PROCEEDINGS OF BOARD

61. Board meetings

- 61.1 A Board Member may at any time, and the Secretary must on the requisition of a Board Member, call a Board meeting.
- 61.2 A Board meeting may be held by the Board communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. The Board need not all be
- 61.3 physically present in the same place for a Board meeting to be held. A Board Member who participates in a meeting held in accordance with this rule 61.2 is taken for all purposes, to be present, and entitled to vote at the meeting.
- 61.4 Subject to this Constitution, the Board may meet together, adjourn and regulate their meetings as they think fit.
- 61.5 At a meeting of the Board a quorum is fifty percent (50%) of the Board Member then holding office, or such greater number as may be fixed by the Board and the quorum must be present at all time during the meeting.
- 61.6 The continuing Board may act despite a vacancy in their number. However, if the number of Board Members is reduced below the number required for a quorum, the remaining Board Member may act only for the purpose of filling the vacancies to the extent necessary to bring their number up to that required for a quorum or to convene a General Meeting.
- 61.7 At least five (5) Board meetings, must take place each financial year.

62. Chairperson

- 62.1 The Chair, or in the Chair's absence the Deputy Chair, will be the chairperson of Board meetings.
- 62.2 The Board Members present may elect one of the Board Members present as chairperson if:
- (a) there is no Chair or Deputy Chair; or
 - (b) neither the Chair nor Deputy Chair is present within fifteen (15) minutes after the time appointed for holding the Board meeting.
- 62.3 If there is a dispute at a Board meeting about a question of procedure, the chairperson may determine the question.

63. Decision on questions

- 63.1 Subject to this Constitution, questions arising at Board meeting are to be decided by a majority of votes of the Board Members present and voting and, subject to rule 65, each Board Member has one (1) vote.
- 63.2 The chairperson of a meeting has a casting vote in addition to the chairperson's deliberative vote if there is an equality of votes.

64. Written resolutions

- 64.1 The Board may pass a resolution without a Board meeting being held if notice in writing of the resolution is given to all Board Members and a majority of the Board Members entitled to vote on the resolution (not being less than the number required for a quorum at a Board meeting) sign a document containing a statement that they are in favour of the resolution set out in the document.
- 64.2 Separate copies of the document may be used for signing by the Board Members if the wording of the resolution and statement is identical in each copy. An email
- 64.3 or other document produced by electronic means under the name of a Board Member with the Board Member's authority is taken to be a document signed by the Board Member for the purposes of rule 64.1 and is taken to be signed when received by the Company in legible form.
- 64.4 The resolution is passed when the last Board Member required to reach a majority for the purposes of rule 64.1 signs the document.
- 64.5 Rule 64 applies to meetings of Committees as if all members of the Committee were Board Member.

65. Board Members' interests

- 65.1 A Board Member shall declare to the Board any material personal interest or related party transaction, as defined by the Corporations Act, as soon as practicable after that Board Member becomes aware of their interest in the matter.
- 65.2 Where a Board Member declares a material personal interest or in the event of a related

party transaction, that Board Member must absent himself or herself from discussion of such matter and shall not be entitled to vote in respect of such matter unless otherwise determined by the Board Member s.

65.3 In the event of any uncertainty in this regard, the issue shall immediately be determined by a vote of the Board or, if this is not possible, the matter shall be adjourned or deferred to the next meeting.

65.4 The Chief Executive Officer shall maintain a register of declared interests.

66. Remaining Board Members

66.1 The Board may act even if there are vacancies on the Board.

66.2 If the number of Board Members is not sufficient to constitute a quorum at a Board meeting, the Board may act only to:

- (a) appoint a Board Member; or
- (b) convene a General Meeting.

67. Validity of acts of Board Members

67.1 If it is discovered that:

- (a) there was a defect in the appointment of a person as a Board Member or member of a Committee; or
- (b) a person appointed to one of those positions was disqualified,

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

68. Board Committees

68.1 The Board may create, define and dissolve Committees from time to time and each Committee shall have a Terms of Reference determined or approved by the Board.

68.2 The chair of each Committee (or his/her nominee) may attend meetings, or parts of meetings, of the Members or Board at the invitation of the Board (if the chair is not a Board Member), where he or she may be invited to speak on the matters directly related to the terms of reference of his or her Committee.

68.3 The Board may delegate any of their powers, other than those which by law must be dealt with by the Board as a board, to a Committee or Committees.

68.4 The Board may at any time vary or revoke any delegation of power to a Committee.

68.5 A Committee appointed shall consist of such persons as the Board thinks fit and may include persons who are not Board Members, including persons with specialist technical skills, knowledge or experience.

68.6 A Committee to select Board Panel Selected Board Appointed Board Members will comprise The Chair, plus two other Board Members, including 1 from New Zealand. Other

member/non-members may attend and assist the Committee but cannot vote on nominations.

68.7 A Committee must exercise its powers in accordance with any directions of the Board and a power exercised in that way is taken to have been exercised by the Board.

68.8 Meetings of any Committee will be governed by the provisions of this Constitution under rule 61 which deal with Board meetings so far as they are applicable and are not inconsistent with any directions of the Board.

69. Minutes and registers

69.1 The Board must cause minutes to be made of:

- (a) the names of the Board Members present at all General Meetings, Board meetings and meetings of Committees;
- (b) all proceedings and resolutions of General Meetings, Board meetings and meetings of Committees;
- (c) all resolutions passed by Board in accordance with rule 64;
- (d) all appointments of officers;
- (e) all orders made by the Board and Committees; and
- (f) all disclosures of interests made pursuant to rule 65.

69.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting.

69.3 The Company must keep all registers required by this Constitution and the Corporations Act.

70. Appointment of attorneys and agents

70.1 The Board may from time to time by resolution or power of attorney appoint any person to be the attorney or agent of the Company:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Board under this Constitution);
- (c) for the period; and
- (d) subject to the conditions,

determined by the Board.

70.2 An appointment by the Board of an attorney or agent of the Company may be made in favour of:

- (a) any company;

- (b) the members, Board Members, nominees or managers of any company or firm; or
- (c) any fluctuating body of persons whether nominated directly or indirectly by the Board.

70.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Board think fit.

70.4 The Board may appoint attorneys or agents by electronic means to act for and on behalf of the Company.

70.5 An attorney or agent appointed under this rule 70 may be authorised by the Board to sub-delegate all or any of the power authorities and discretions for the time being vested in it.

CHIEF EXECUTIVE OFFICER

71. Chief Executive Officer

71.1 The Board may from time to time appoint and suspend or remove a person to the position of Chief Executive Officer of the Company, for the period and on the terms (including as to remuneration) as the Board see fit.

71.2 If the position of Chief Executive Officer is vacant, the Board may appoint any other person to act temporarily as Chief Executive Officer. Without limiting the generality of the foregoing, the Board may appoint the Chair or Deputy Chair to the position of Chief Executive Officer on a temporary basis for a period not exceeding 12 months, in which case that person shall resign as a Board Member under rule 55.1(a).

71.3 The Chief Executive Officer is not a member of the Board, but will have a standing invitation to attend meetings of the Board and any Committees and may speak on any matter, unless excused from doing so by the Chair or where the Board otherwise request.

71.4 The Chief Executive Officer will be responsible for the day-to-day management of the Company.

71.5 The Board may confer on the Chief Executive Officer any powers exercisable by the Board, subject to any terms and restrictions determined by the Board.

71.6 The Chief Executive Officer may be authorised by the Board to sub-delegate all or any of the powers vested in him or her.

71.7 The Board may at any time withdraw or vary any of the powers conferred on the Chief Executive Officer.

SECRETARY AND OTHER OFFICERS

72. Secretary

72.1 There must be at least one (1) secretary of the Company appointed by the Board for a term and on conditions determined by the Board.

72.2 The Secretary is entitled to attend and be heard on any matter at all Board Meetings and General Meetings.

72.3 The Board may, suspend, remove or dismiss the Secretary.

73. Other officers

73.1 The Board may from time to time:

- (a) create any other position or positions in the Company with the powers and responsibilities as the Board may from time to time confer; and
- (b) appoint any person, whether or not a Board Member, to any position or positions created under paragraph (a).

73.2 The Board at any time may terminate the appointment of a person holding a position created under rule 73.1 and may abolish the position.

SEALS

74. Common Seal

74.1 The Company may at the option of the Board have a Seal.

74.2 If the Company has a Seal:

- (a) the Board must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Board or a Committee authorised to use the Seal;
- (c) every document to which the Seal is affixed must be signed by a Board Member and be countersigned by another Board Member, the Secretary or another person appointed by the Board to countersign the document.

74.3 The Company may execute a document without using its Seal in accordance with the Corporations Act.

75. Duplicate Seal

75.1 If the Company has a Seal, the Company may have one or more duplicate seals of the Seal each of which:

- (a) must be a facsimile of the Seal with "Duplicate Seal" on its face; and
- (b) must not be used except with the authority of the Board.

INSPECTION OF RECORDS

76. Times for inspection

76.1 Except as otherwise required by the Corporations Act, the Board may determine whether

and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open for inspection by Members other than Board.

- 76.2 Except as otherwise required by the Corporations Act, a Member other than a Board Member does not have the right to inspect any accounting records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Board.

ACCOUNTS AND AUDIT

77. Accounts and audit

- 77.1 The Board must cause the Company to keep accounts of the business of the Company in accordance with the requirements of the Corporations Act and the ACNC Act.

- 77.2 The Board must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act and the ACNC Act.

FINANCIAL YEAR

78. Company's financial year

- 78.1 The Company's financial year is from 1 July to 30 June, unless the Board pass a resolution to change the financial year.

NOTICES

79. Service of notices

- 79.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution by:

- (a) serving it on the person;
- (b) sending it by email, post, courier, facsimile transmission or other electronic means to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person;
- (c) any other means requested by the person and agreed to by the Company.

- 79.2 A notice sent by post or courier is taken to be served:

- (a) by properly addressing, prepaying and posting a letter containing the notice; and
- (b) on the seventh business day after the day on which it was posted or given to the courier for delivery.

- 79.3 A notice sent by email, facsimile transmission or other electronic means is taken to be

served:

- (a) by properly addressing the email, facsimile transmission or electronic document and sending it; and
- (b) on the day of transmission except if transmitted after 5.00pm in which case it is taken to be served on the next business day.

79.4 A Member whose registered address is not in Australia may specify in writing an address in Australia as the Member's registered address within the meaning of this rule.

79.5 A certificate in writing signed by a Board Member, Secretary or other officer of the Company that a document was addressed and sent is conclusive evidence of the giving of the notice.

79.6 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed, including electronic signature.

80. Persons entitled to notice

80.1 Notice of every General Meeting must be given to:

- (a) every Member;
- (b) every Board Member and Secretary; and
- (c) any Auditor.

80.2 No other person is entitled to receive notice of a General Meeting.

80.3 Notice of every Board meeting shall be given to every Board Member and Secretary. Such notice shall afford the Board Member a reasonable opportunity to participate in the meeting.

INDEMNITY AND INSURANCE

81. Indemnity and insurance

81.1 To the extent permitted by the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against any liability incurred by that person as such an officer in respect of any act or omission whatsoever and howsoever occurring in defending proceedings, whether civil or criminal.

81.2 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company against a liability incurred by the person as such an officer unless the liability arises out of:

- (a) conduct involving a wilful breach of duty in relation to the Company; or
- (b) without limiting paragraph (a), a contravention of sections 182 or 183 of the Corporations Act,

or for costs and expenses incurred by the person as such an officer or auditor in

defending proceedings, whether civil or criminal and whatever their outcome.

81.3 Despite anything in this Constitution, a Board Member is not precluded from voting in respect of any contract or proposed contract of insurance merely because the contract insures or would insure the Board Member against a liability incurred by the Board Member as an officer of the Company or of a related body corporate.

81.4 In rule 81:

indemnify means indemnify except to the extent prohibited by section 199A of the Corporations Act;

officer has the meaning given to that term in section 9 of the Corporations Act; and

pay means a payment except to the extent prohibited by 199B of the Corporations Act.

WINDING UP

82. Contributions of Members

82.1 If the Company is wound up:

- (a) each Member; and
 - (b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:
 - (c) payment of debts and liabilities of the Company (in relation to paragraph 82.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
 - (d) adjustment of the rights of the contributories amongst themselves,
- such amount as may be required, not exceeding \$20 in aggregate.

83. Excess Property

83.1 If on the winding up or dissolution of the Company, and after satisfaction of all its debts and liabilities, any property remains, that property:

- (a) shall not be paid to or distributed amongst the Members or former members of the Company; but
- (b) must be given or transferred to such Eligible Recipients as are determined by the Members at or before the time of winding-up or dissolution.

83.2 If the Members do not make the necessary determination under rule 83.1(b), the Company may apply to the Supreme Court of Victoria to determine such Eligible Recipients.

84. Environmental Organisation

84.1 Establishment of a Public Fund

84.2 The Company will establish and maintain a public fund to be called the 'BGANZ Public Fund' for the specific purpose of supporting the environmental objects/purposes of the Company. The Public Fund will be established to receive all gifts of money or property for this purpose and any money received because of such gifts must be credited to its bank account. The Public Fund must not receive any other money or property into its account and it must comply with subdivision 30-E of the Income Tax Assessment Act 1997 (Cth). The Public Fund will operate under the rules set out in Schedule 1.

84.3 Requirements of the Public Fund

The Company must inform the Department as soon as possible if:

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

84.4 Ministerial rules

The Company agrees to comply with any rules that the Commonwealth Treasurer and/or the Minister may make, to ensure that gifts made to the Public Fund are only used for the Public Fund's principal purpose.

84.5 Not-for-profit

Without limiting clauses 4 and 6, the income and property of the Company must be applied solely in promotion of the Company's objects and no portion may be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to members, directors, (or trustees if relevant) or the Company.

84.6 Conduit Policy

Any allocation of funds or property to other persons or entities will be made in accordance with the established purposes of the Company and will not be influenced by the preference of a donor.

84.7 Winding - up or revocation

Notwithstanding clauses 82 and 83, in case of the winding-up or revocation of the Public Fund, any surplus assets are to be transferred to another fund with similar objectives that is on the REO.

84.8 Statistical information

Statistical information requested by the Department on donations to the Public Fund will be provided within four months of the end of the financial year. An audited financial statement for the Company and its Public Fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of Public Fund monies and the management of Public Fund assets.

84.9 ACNC and ATO reporting

The Company will notify the ACNC and ATO of any changes to its Constitution, board or Public Fund committee of management. The Company will provide the ACNC and ATO with any details including financial details, as required.

SCHEDULE 1

First Board Members DRAFT

Item 1 – Name	Item 2 – Term	Item 3 – Eligibility**
Member- Elected Board Members		
Current President	Term ends 2024AGM	Eligible for re-election or appointment as Board Member at any AGM up to (but not including) the 2028 AGM,
Current NZ Rep	Term ends 2024GM	Eligible for re-election or appointment as a Board Member at any AGM up to (but not including) the 2027 AGM,
Suggestion 1	Term ends 2023 AGM	Eligible for re-election or appointment as a Board Member at any AGM up to (but not including) the 2028 AGM,
Suggestion 2	Term ends 2023 AGM	Eligible for re-election or appointment as Board Member at any AGM up to (but not including) the 2027 AGM
Board-Appointed Board Members		
Marketing Communications	Term ends 2023 AGM	Eligible for re-appointment or election as a Board Member at any AGM up to (but not including) the 2027
Financial Management	Term ends 2023 AGM	Eligible for re-appointment or election as a Board Member at any AGM up to (but not including) the 2028
Strategic Planning	Term ends 2024 AGM	Eligible for re-appointment or election as a Board Member at any AGM up to (but not including) the 2028 AGM,
Governance/Risk	Term ends 2024 AGM	Eligible for re-appointment or election as a Board Member at any AGM up to (but not including) the 2027 AGM,
Partnerships and Development	Term ends 2024 AGM	Eligible for re-appointment or election as a Board Member at any AGM up to (but not including) the 2027 AGM

Schedule 2 – Public Fund Rules

1. The objective of the Public Fund is to support the Company's environmental purposes as set out in clause 4.
2. The Public Fund must comply with Part 2.1 subdivision 30-E of the Income Tax Assessment Act 1997 (Cth).
3. The Public Fund will be operated on a not-for-profit basis in the same way as the Company, as set out in clause 6.
4. A separate bank account is to be opened to deposit money donated to the Public Fund, including interest accruing thereon, and gifts to the Public Fund are to be kept separate from the funds of the Company.
5. Receipts are to be issued in the name of the Public Fund and proper accounting records and procedures are to be kept and used for the Public Fund. The Company will establish policies in respect of same.
6. Members of the public are to be invited to make gifts of money or property to the Public Fund, for the environmental purposes of the Company.
7. Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Public Fund.
8. The Public Fund may only receive donations of money or property and may not otherwise receive any funds (including sponsorship monies or testamentary gifts).
9. A committee of management of no fewer than three persons will administer the Public Fund. This committee will be appointed by the directors of the Company. A majority of the members of the committee administering the Public Fund are required to be 'responsible persons' as defined by the guidelines to the REO.
10. In case of the winding-up or revocation of the Public Fund, any surplus assets are to be transferred to another fund with similar objectives, that is a deductible gift recipient and on the REO.