

# **CONSTITUTION OF GREENPEACE AUSTRALIA PACIFIC LIMITED ACN 002 643 852**

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As resolved by members at the Annual General Meeting held on the 27<sup>th</sup> May 2017

A company limited by guarantee

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## GENERAL

### 1. Definitions

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1.1 The following definitions apply in this Constitution unless the context requires otherwise.

**Board** means the Board of directors of the Company.

**The Company** means the company limited by guarantee called Greenpeace Australia Pacific Limited.

**Director** means a person appointed or elected to the office of director of the Company in accordance with this Constitution.

**Law** means the Corporations Law and the Corporations Regulations and/or any amending or superseding legislation.

**Member Present** means, in connection with a meeting, the member present in person at the venue or venues for the meeting or by proxy, by attorney or, where the member is a body corporate, by representative or who is present by means of technology that gives the members as a whole a reasonable opportunity to participate.

**Seal** means any common seal or duplicate common seal of the Company.

**Company Secretary** means any person appointed to perform the duties of a secretary of the Company and includes an honorary secretary.

### 2. Interpretation

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2.1 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 Article 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) Section 5C of the Law and section 46 of the *Acts Interpretation Act 1901* (Cth) as well as Part 1.2 of the Law apply in relation to this Constitution as if it were an instrument made under the Law.
- (g) 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 Law, the same meaning as in that provision of the Law.

### **3. Replaceable rules**

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- 3.1 The replaceable rules contained in the Law do not apply to the Company.

### **4. Previous constitution superseded**

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- 4.1 This amended Constitution supersedes the constitution in force immediately before the adoption of this Constitution.

### **5. Transitional**

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- 5.1 Everything done under any previous constitution of the Company continues to have the same operation and effect after the adoption of this Constitution as if properly done under this Constitution. In particular:
- (a) every director and Company Secretary in office immediately before adoption of this Constitution is taken to have been appointed and shall continue in office under this Constitution; and
  - (b) any Seal adopted by the company before the adoption of this Constitution is taken to be a Seal properly adopted under this Constitution.

### **6. Actions authorised under the Law and in compliance with the Law**

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

### **7. Objects**

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- 7.1 The objects for which the Company is established are:
- (a) to protect, preserve and enhance the natural environment;
  - (b) to promote nuclear disarmament and peace;
  - (c) to establish and maintain a public fund to be called The Greenpeace Trust for the specific purpose of supporting the environmental objects of the Company. 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 sub-division 30-E of the *Income Tax Assessment Act 1997*.

## **INCOME AND PROPERTY**

### **8. Application of income and property**

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- 8.1 Subject to Articles 8.2 and 50, the profits (if any), surplus or other income and property of the Company must be applied solely towards the promotion of the objects of the Company set out in Article 7 and no portion of it may be paid or transferred, directly or indirectly, to any member of the Company whether by way of dividend, bonus or otherwise.
- 8.2 Nothing in Article 8.1 prevents any payment in good faith by the Company of:
- (a) reasonable and proper remuneration to any General Assembly member for any services actually rendered or goods supplied in the ordinary and usual course of business to the Company;

- (b) the payment or reimbursement of out-of-pocket expenses incurred by a General Assembly member on behalf of the Company where the amount payable does not exceed an amount previously approved by the Board;
- (c) reasonable and proper rent for premises let or demised by any member of the General Assembly to the Company;
- (d) moneys to any member, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service; or
- (e) interest on any money borrowed from any General Assembly member at a rate not exceeding commercial market rates of interest for money lent by trading banks from time to time.

## **9. Requirements of the Greenpeace Trust**

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- 9.1 The Company must inform the Department responsible for the environment as soon as possible if:
  - (a) it changes its name or the name of the Greenpeace Trust;
  - (b) there is any change to the membership of the management committee of the Greenpeace Trust; or
  - (c) there has been any departure from the rules of the Greenpeace Trust.
- 9.2 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 objects.
- 9.3 Any allocation of funds or property to other persons or organisations will be made in accordance with the established objects of the organisation and not be influenced by the preference of the donor.
- 9.4 In case of the winding up of the Trust, any surplus assets are to be transferred to another fund with similar objects that is on the Register of Environmental Organisations, which will be selected by the General Assembly, or if the General Assembly does not make a selection, by the Board.
- 9.5 Statistical information requested by the Department on donations to the Greenpeace Trust will be provided within 4 months of the end of the financial year.
- 9.6 An audited financial statement for the Company and the Greenpeace Trust will be supplied with the annual statistical return. The statement will provide information on the expenditure of trust monies and the management of trust assets.

## **10. Rules for the Greenpeace Trust**

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- 10.1 The objective of the Trust is to support the Company's environmental purposes.
- 10.2 Members of the public are invited to make gifts of money or property to the Trust for the environmental purposes of the Company.
- 10.3 Money from donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Trust.

- 10.4 A separate bank account is to be opened to deposit money donated to the Trust, including interest accruing thereon, and gifts to it are to be kept separate from other funds of the organisation.
- 10.5 Receipts are to be issued in the name of the Trust and proper accounting records and procedures are to be kept and used for the Trust.
- 10.6 The Trust will be operated on a non-profit basis.
- 10.7 The Board will administer the Trust. The committee will be appointed by the General Assembly. The majority of the Board members are required to be “responsible persons” as defined by the Guidelines to the Register of Environmental Organisations.

## **LIABILITY**

### **11. Limited liability**

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- 11.1 The liability of members is limited.

### **12. Extent of liability**

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- 12.1 Each General Assembly member undertakes to contribute to the property of the Company if the Company is wound up while that person is a member or within one year afterwards for payment of the Company’s debts and liabilities contracted before that person ceases to be a member and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, provided that the amount that may be required from any member shall not exceed \$5.00.

## **AMENDMENT OF CONSTITUTION**

### **13. Amendment of constitution**

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- 13.1 This Constitution may be altered, rescinded or repealed and a new constitution made by the Company in a general meeting in the manner prescribed by the Law.
- 13.2 No addition, alteration or amendment to this Constitution will be effective unless such addition, alteration or amendment has, if required, been approved by the relevant Minister or other relevant authority under the *Charitable Fundraising Act 1991* (NSW) or similar legislation.

## **MEMBERSHIP**

### **14. Role of members**

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- 14.1 General Assembly members are the members or constituents of the Company, who wish to promote the objects of the Company and who agree to accept the powers and obligations set out in this Constitution.
- 14.2 The General Assembly elects the Board from its members and participates in overseeing and decision making through the annual general meeting, and any extraordinary general meeting or postal ballot.
- 14.3 General Assembly members are informal, external advocates for the promotion of the objects of the Company. The Board may seek to engage the General Assembly on specific issues from time to time.

## **15. Members**

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- 15.1 The number of members of the General Assembly of the Company shall be determined by the Board, but shall not be less than 50.
- 15.2 The members of the General Assembly will be persons admitted to membership in accordance with this Constitution.
- 15.3 A General Assembly member must resign before taking up any position as an employee of the Company.
- 15.4 An employee of the Company is not eligible to be elected to membership of the General Assembly until 12 months after the cessation of their employment with the Company. For the avoidance of doubt, volunteers and unpaid interns are not, for the purpose of this Article, employees of the Company.

## **16. Application for membership**

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- 16.1 Every applicant for membership of the General Assembly must be proposed by one member of the General Assembly and seconded by another member of the General Assembly.
- 16.2 All applications for membership of the General Assembly shall be reviewed by the Board and the Board may, in its absolute discretion, reject any application for membership.
- 16.3 An application for membership of the General Assembly shall be in writing, signed by the applicant, the proposer and seconder and in a form prescribed by the Board. Where an application is submitted electronically, the requirement for signing by the applicant, proposer and seconder can be met by a typewritten depiction by that person of their name.
- 16.4 An applicant for membership of the General Assembly must, at the time of his or her application, provide to the Company Secretary a document of up to 500 words in support of his or her application.
- 16.5 A person is not eligible for election or re-election as a member of the General Assembly at a general meeting unless the Company Secretary receives his or her application for membership at least 21 days before the meeting.

## **17. Duration of membership and retirement**

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- 17.1 A person who is admitted as a member of the General Assembly in accordance with Article 19 shall remain a member of the General Assembly for four years or until he or she ceases to be a member in accordance with this Constitution.
- 17.2 A General Assembly member must retire from office at the conclusion of the fourth annual general meeting after the member was elected.

## **18. Election of members**

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- 18.1 Election of members of the General Assembly shall be by ballot conducted by a returning officer appointed by the Annual General Meeting.
- 18.2 The ballot shall take place at the Annual General Meeting, by means of a printed ballot paper showing the names of all candidates for the available positions, with space beside each name for voters to enter 'yes' or 'no'.
- 18.3 Voters may mark beside each candidate's name yes or no, with no requirement to mark any particular number of yes votes.
- 18.4 Any ballot paper without every name marked yes or no will be invalid.

- 18.5 Subject to Article 18.6, at counting, candidates who have a majority of affirmative votes available from voters exercising their right to vote will be elected.
- 18.6 In the event that there are more applications for membership than there are memberships available to be filled, those candidates who receive the most affirmative votes will be elected, up to the total number of memberships that are available to be filled. In the event of a tie the chair of the meeting has the casting vote.
- 18.7 The returning officer will declare the results of the ballot immediately after counting.
- 18.8 The Board may prescribe rules to govern the participation in the election of members by ballot by members participating in the Annual General Meeting by means of technology or direct voting including rules specifying the form, method and timing of giving the vote in order for the vote to be valid.

## **19. Admission to membership**

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- 19.1 When an applicant has been elected to membership of the General Assembly, the Company Secretary shall notify the applicant in writing and request payment of any membership fees as determined by the General Assembly from time to time. The notification by the Company Secretary may be given in the manner set out in Article 73 as if this notification were a notice to a member.
- 19.2 If the applicant does not pay the membership fee (if any) within 30 days after the date on which the applicant is notified that the fees are payable, the Board may, in its absolute discretion, cancel the election of the applicant for membership, whether or not payment is made after the due date.
- 19.3 Subject to Article 19.2, on payment of the membership fee (if any), or if there is no membership fee on the day on which notice is deemed to be received, the applicant will immediately become a member of the General Assembly and must be registered on the Company's register of General Assembly members.

## **20. Honorary membership**

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- 20.1 The General Assembly may appoint honorary members of the General Assembly.
- 20.2 An honorary member shall be a person who has made a significant contribution to the ideals, policies or work of the Company or who has demonstrated a commitment to the principles of the global Greenpeace movement and who possess special skills or attributes which would significantly advance the interests of the Company.
- 20.3 Any honorary member shall not be entitled to vote at any meeting of the members of the Company, nor shall he or she be liable for payment of any membership fees nor for payment of any amount upon the winding up of the Company.

## **21. Membership fees**

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- 21.1 The membership fee payable by members of the General Assembly is the amount prescribed by the General Assembly in general meeting from time to time.
- 21.2 Membership fees will be due and payable at such dates and such intervals as prescribed by the General Assembly in general meeting.
- 21.3 The Board may grant to any member a full or partial exemption from payment of membership fees.

## **22. Appointment of members to fill casual vacancies**

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- 22.1 In the event that the number of members of the General Assembly falls below 50 at any time of the year the vacancy may be filled by appointment by the Board. Any General Assembly member so appointed shall hold membership only until the conclusion of the next annual general meeting and is eligible for election at that annual general meeting.
- 22.2 A person appointed to fill a casual vacancy may not be an employee of the Company or must not have been employed by the Company within the 12 months preceding the proposed appointment.
- 22.3 Articles 16, 17 and 18 do not apply to the appointment of a General Assembly member by the Board in accordance with this Article.
- 22.4 Articles 19 and 21.3 do apply to the appointment of a General Assembly member by the Board in accordance with this Article.

## **CESSATION OF MEMBERSHIP**

### **23. Circumstances in which a member shall cease to be a member**

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- 23.1 A General Assembly member shall cease to be a member if:
- (a) he or she dies;
  - (b) he or she resigns, by giving notice in writing to the Company Secretary, as a member of the General Assembly;
  - (c) if he/she fails to pay any membership fees and has not been granted a full or partial exemption from payment by the Board;
  - (d) he or she is found by the Board to be in breach of the provisions of this Constitution;
  - (e) he or she is guilty of any act or omission which, in the opinion of the Board is unbecoming of a member, or prejudicial to the interest of the Company;
  - (f) he or she takes up a position as an employee of the Company;
  - (g) he or she is excluded by special resolution of the General Assembly; and
  - (h) if he/she fails to attend, or appoint a proxy to, or have an apology accepted by, two consecutive annual general meetings of the General Assembly.

### **24. Notice of proposed exclusion**

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- 24.1 Any member to be excluded from membership of the General Assembly under Article 23 shall be given at least 14 days notice stating the date, time and place at which the question of exclusion of that member is to be considered, and a statement outlining the reasons for proposing their exclusion.
- 24.2 The member is given the opportunity of giving to the General Assembly or the Board, orally or in writing, any explanation that he/she may think fit.
- 24.3 If the Board resolves to expel a member of the General Assembly, the member then has the right exercisable by notifying the Company Secretary within 7 days after receipt of notice (the Expulsion Notice Period) to have the issue dealt with by the General Assembly in general meeting. In that event, a general meeting of the Company must be called for that purpose. If a special resolution to expel the member is passed at the meeting, the member ceases to be a member on the making of the resolution.



- 24.4 If the member does not notify the Company Secretary on or before the expiration of the Expulsion Notice Period that the member wishes to have the issue dealt with by the General Assembly in general meeting, the member ceases to be a member on the expiration of the Expulsion Notice Period.

## **25. Removal from register**

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- 25.1 The name of any member who ceases to be a member of the General Assembly shall be removed from the register of General Assembly members.

## **GENERAL MEETINGS OF THE GENERAL ASSEMBLY**

### **26. Annual general meeting**

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- 26.1 Subject to the Law, annual general meetings of the General Assembly shall be held in each year at such time and place or by such other lawful means or combination of means of communication as the Board may determine. For the avoidance of doubt, meetings of the General Assembly may be held at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

### **27. Business of annual general meeting**

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- 27.1 The business of any annual general meeting shall be:
- (a) to confirm the minutes of the previous annual general meeting and of any extraordinary general meeting held during the preceding year;
  - (b) to receive the annual financial report including the directors' report;
  - (c) to receive the auditors reports;
  - (d) to appoint an auditor ( if an auditor is required), except in the case of a continuing auditor and to fix the remuneration of the auditor;
  - (e) to determine any membership fee;
  - (f) to elect the members of the General Assembly in place of those retiring in accordance with the Constitution;
  - (g) to elect the directors in the place of those retiring in accordance with the Constitution;
  - (h) to consider any other business the general nature of which shall have been specified in the notice convening the meeting or which the chair of the meeting permits to be brought before the meeting, including declaring the results of any postal ballot.

### **28. Extraordinary general meetings of the general assembly**

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- 28.1 All general meetings, other than the annual general meeting, shall be called extraordinary general meetings.
- 28.2 The Board must call an extraordinary general meeting:
- (a) at such time as it deems fit;
  - (b) upon receipt of a written request for same by more than 25 General Assembly members.

The meeting must be called within 21 days of receiving the requisition and must be held no later than 2 months after the requisition.

- 28.3 For the avoidance of doubt, extraordinary general meetings of the General Assembly may be held at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

## **29. Business of extraordinary general meetings of members**

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- 29.1 The business of an extraordinary general meeting shall be to consider the business, the general nature of which shall have been specified in the notice convening the meeting or which the chair permits to be brought before the meeting.

## **30. Notice of general meetings**

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- 30.1 At least 21 days notice specifying the date, day, time and place and time of the general meeting and the business to be transacted at the meeting shall be given to General Assembly members in the manner hereinafter mentioned or in such a manner if any as may be prescribed by the Board.
- 30.2 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.

## **31. Quorum**

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- 31.1 Business must not be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- 31.2 Except as otherwise provided in this Constitution, 20 Members Present constitute a quorum.

## **32. If lack of quorum**

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

## **33. Chair of meetings**

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- 33.1 Subject to Article 33.2 the chair of the Board or, in the chair's absence, the deputy chair will preside as chair at every general meeting.
- 33.2 Where a general meeting is held and:
- (a) there is no chair or deputy chair; or
  - (b) the chair or deputy chair 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 may 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 may elect one of their number to be chair of the meeting.

### **34. Adjournments**

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- 34.1 The chair of a general meeting may, with the consent of the meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place.
- 34.2 No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 34.3 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

### **35. Voting at general meetings**

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- 35.1 Except where a resolution requires a special majority, questions arising at a meeting of the General Assembly must be decided by a majority of votes cast by members entitled to attend and vote.
- 35.2 Any resolution to be considered at a meeting must be decided on a show of hands unless a poll is demanded.
- 35.3 Direct voting:
- (a) The Board may determine that, at any meeting of the General Assembly, each member who is entitled to attend and vote at that meeting is entitled to a direct vote by giving a valid notice of the member's intention to vote;
  - (b) A direct vote includes a vote delivered to the Company by post, facsimile transmission or other electronic or technological means approved by the Board;
  - (c) The Board may prescribe rules to govern direct voting including rules specifying the form, method and timing of giving the direct vote in order for the vote to be valid;
  - (d) The Chair's decision as to whether a direct vote is valid in accordance with this Constitution and any rules made by the Board is conclusive;
  - (e) A person who has cast a direct vote is entitled to attend the meeting however the member must inform the Chair whether they maintain their direct vote or alternatively whether they will vote in person or by proxy or attorney.
- 35.4 If a vote is taken on a resolution on which a direct vote was cast by a member:
- (a) if the vote was taken on a show of hands, the vote of each member who submitted a direct vote must be counted in accordance with their direct vote; and
  - (b) if the vote was taken on a poll, the vote of each member who submitted a direct vote must be counted in accordance with their direct vote.
- 35.5 Despite the Law, a poll for a resolution may be demanded by at least 5% of Members Present and entitled to vote on the resolution.
- 35.6 A poll may not be demanded on the election of a chair or on a resolution for adjournment.

### **36. Procedure for polls**

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- 36.1 A poll when demanded must be taken in the manner and at the time the chair directs.
- 36.2 The result of the poll is a resolution of the meeting at which the poll was demanded.

- 36.3 If a poll has been demanded at a meeting, the meeting may continue with the transaction of business other than the resolution on which the poll was demanded.

### **37. Chair's casting vote**

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- 37.1 In the case of an equality of votes on a show of hands or on a poll the chair of the meeting has the casting vote in addition to any vote to which the chair was entitled as the member, proxy, attorney or body corporate representative.

### **38. Representation and voting of members**

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- 38.1 At meetings of the General Assembly each member entitled to attend and vote may attend and vote:
- (a) in person;
  - (b) by proxy, or attorney, or where the member is a body corporate by representative; or
  - (c) if the Board has made a determination in accordance with Article 35.3(a), by a direct vote.
- 38.2 A member is not entitled to vote at a general meeting unless all fees presently payable by the member in respect of membership in the General Assembly have been paid.
- 38.3 Regardless of how a member chooses to cast their vote, every Member Present having the right to vote at the meeting has one vote.

### **39. Objections to qualification to vote**

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- 39.1 An objection to the qualification of a person to vote may be raised only at the meeting or adjourned meeting at which the vote objected to is tendered.
- 39.2 Any objection must be referred to the chair of the meeting, whose decision is final.
- 39.3 A vote allowed after objection is valid for all purposes.

### **40. Number of proxies**

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- 40.1 A member may appoint 1 proxy, who must be named on the proxy instrument.
- 40.2 A proxy must be a member.
- 40.3 No member may hold more than one proxy per meeting.

### **41. Form of proxy**

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- 41.1 An instrument appointing a proxy must be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing.
- 41.2 A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- 41.3 An instrument appointing a proxy may be in any form that the Board may accept or stipulate.

### **42. Lodgment of proxies and attorneys**

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- 42.1 An instrument appointing an attorney to act on behalf of a member at all meetings of the General Assembly (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 Board may

permit) before the commencement of the meeting or adjourned meeting at which the attorney proposes to vote:

- (a) a Power of Attorney or a certified copy of that Power of Attorney and;
- (b) any evidence that the Board may require of the validity and non revocation of that power of attorney.

42.2 For an instrument appointing a proxy to act on behalf of a member at all meetings of the General Assembly (or at all meetings for a specified period) to be effective it shall be received by the Company not less than 48 (forty eight) hours (or any shorter period as the Board may permit) before the commencement of the meeting or the adjourned meeting at which the proxy proposes to vote.

### **43. Validity of proxies and attorneys**

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43.1 A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:

- (a) the previous death or unsoundness of mind of the principal; or
- (b) the revocation of the instrument (or the authority under which the instrument was executed) or the power, unless 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 or the meeting or adjourned meeting at which the instrument is used or the power is exercised.

43.2 A proxy is revoked by the principal attending the meeting

### **44. Where proxy is incomplete**

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44.1 No instrument appointing a proxy is treated as invalid merely because it does not contain:

- (a) the address of the appointor or of a proxy; or
- (b) in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.

### **45. Ballot by postal or electronic or other technological means**

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45.1 A resolution of the members decided by ballot by postal or electronic or other technological means shall be valid and effective as if it had been passed at a meeting of the General Assembly duly called and constituted.

45.2 Any ballot by postal or electronic or other technological means shall be conducted in the manner prescribed by the Board from time to time.

### **46. Right of officers and advisers to attend general meeting**

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46.1 A Company Secretary who is not a member of the General Assembly is entitled to be present and, at the request of the chair, to speak at any general meeting.

46.2 Any other person (whether a member or not) requested by the Board to attend any general meeting is entitled to be present and, at the request of the chair, to speak at the general meeting.

## **DIRECTORS**

### **47. Number of directors**

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- 47.1 The number of directors on the Board shall be determined by the General Assembly in general meeting, but shall be no fewer than 6 and no more than 12.

### **48. Appointment and removal**

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- 48.1 All directors must be members of the General Assembly, and shall be elected by the General Assembly at the annual general meeting by ballot conducted by a returning officer appointed by the Annual General Meeting.
- 48.2 Each applicant for membership of the Board must be nominated by one member of the General Assembly and seconded by another member of the General Assembly.
- 48.3 Each applicant for membership of the Board must provide to the Company Secretary, his or her application and a document of up to 500 words in support of his or her application, at least 21 days before the general meeting at which the election will be held.
- 48.4 A person is not eligible for election or re-election as a director at a general meeting unless the person, or a member of the General Assembly who intends to propose the person, has given written notice of the directors candidature, signed by the candidate, the proposer, at least 21 days before the meeting.
- 48.5 The ballot shall take place at the Annual General Meeting in the following manner:
- (a) By means of a printed ballot paper showing the names of all candidates for the available positions, with space beside each name for voters to enter 'yes' or 'no'.
  - (b) Voters may mark beside each candidate's name yes or no, with no requirement to mark any particular number of yes votes.
  - (c) Any ballot paper without every name marked yes or no will be invalid.
  - (d) Subject to Article 48.5(f), at counting, candidates who have a majority of affirmative votes available from voters exercising their right to vote will be elected.
  - (e) In the event that there are more applications for positions on the board than there are positions available to be filled, those candidates who receive the most affirmative votes will be elected, up to the total number of positions that are available to be filled. In the event of a tie the chair of the meeting has the casting vote.
  - (f) The returning officer will declare the results of the ballot immediately after counting.
- 48.6 The Board may prescribe rules to govern the election of directors by ballot by members who are participating in the Annual General Meeting by means of technology or direct voting including rules specifying the form, method and timing of giving the vote in order for the vote to be valid.
- 48.7 In case there shall not be a sufficient number of applications the General Assembly membership may fill any remaining vacancy or vacancies from Members Present at the general meeting at which the election is held.
- 48.8 Co-opting of directors:
- (a) Under extra-ordinary circumstances (for example, lack of institutional knowledge amongst Board members or the need for particular expertise), the Board may co-opt directors, subject to the provisions of Article 47.

- (b) This will require a resolution to be passed by at least 75% of Board members present and eligible to vote.
  - (c) Co-opted directors shall stand down at the first AGM after their co-option, and are eligible for election, unless barred by other Articles in this constitution.
- 48.9 Subject to the Law, the General Assembly may at any time by resolution passed in general meeting remove any director from office.
- 48.10 Any casual vacancy may be filled by appointment by the Board. Any director so appointed shall hold office only until the next annual general meeting and is eligible for re-election.
- 48.11 In the event that the number of directors is reduced to less than 6 then and in such case the continuing directors may only act for the purpose of filling the vacancies until there are at least 6 members of the Board. Any director so appointed shall hold office only until the next annual general meeting and is eligible for re-election.

## **49. Retirement of directors**

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- 49.1 A director must retire from office at the conclusion of the third annual general meeting after the director was appointed or last elected.
- 49.2 When a director retires at an annual general meeting, the General Assembly may by ordinary resolution elect a person to fill the vacated office.
- 49.3 Subject to Article 49.4, a director may hold office for a maximum of two terms.
- 49.4 If a director is elected Chair, she or he may hold office for a maximum of three terms, including terms both as director and as Chair, so that the maximum number of consecutive years on the Board for any individual would be nine.
- 49.5 Articles 49.3 and 49.4 shall apply to directors in office at the time the Article was inserted in this Constitution.
- 49.6 If the vacated office is not filled and the retiring director has offered himself or herself for re-election, the retiring director is deemed to have been re-elected unless, at the meeting at which he or she retires:
- (a) it is resolved not to fill the vacated office; or
  - (b) the resolution for the re-election of the director is put and lost.
- 49.7 Following retirement, a former director shall only be re-eligible for election to the Board after the expiration of four years from his or her retirement.

## **50. Remuneration**

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- 50.1 Subject to Article 50.2, the directors may be paid for their services as directors. Such fees shall be determined by the Board, but must not exceed, in aggregate, a maximum sum that is from time to time approved by resolution of the General Assembly. Any notice convening a general meeting at which it is proposed to seek approval to increase that maximum aggregate sum must specify the proposed new maximum aggregate sum and the amount of the proposed increase.
- 50.2 The fees fixed under Article 50.1:
- (a) must be divided among the directors in the proportions as they may agree or, if they cannot agree, equally among them; and

- (b) are exclusive of any benefits that the Company provides to directors in satisfaction of legislative schemes (including benefits provided under superannuation guarantee or similar schemes or any other benefit permitted by the Law or this Constitution).

50.3 If any director, with the approval of the directors, performs extra services or makes any special exertions for the benefit of the Company, the directors may approve the payment to that director of special and additional remuneration as the directors think fit having regard to the value to the Company of the extra services or special exertions. Any special or additional remuneration must not include a commission on or percentage of profits or operating revenue or turnover. The General Assembly must subsequently ratify any special or additional remuneration.

50.4 The directors are entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the directors, committee of the directors, general meeting of the Company or otherwise in connection with the business or affairs of the Company.

## **51. Vacation of office**

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51.1 In addition to the circumstances in which the office of a director becomes vacant:

- (a) under the Law; or
- (b) because of a resolution under Article 48.9;

the office of a director becomes vacant if the director:

- (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) resigns by notice in writing to the Company;
- (e) is absent without the consent of the Board from 2 continuous Board meetings;
- (f) dies; or
- (g) ceases to be a member of the General Assembly.

## **POWERS AND DUTIES OF THE BOARD**

### **52. Powers and duties of the Board**

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52.1 Subject to the Law and this Constitution, the business of the Company is managed by the Board, who may exercise all powers of the Company which are not, by the Law or this Constitution, required to be exercised by the General Assembly in general meetings.

52.2 Without limiting the generality of Article 52.1, the Board may exercise all the powers of the Company;

- (a) to borrow money, to charge any property or business of the Company or any of its uncalled capital;
- (b) to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

52.3 The Board shall ensure that the Company complies with the terms of any Licence Agreement with Stichting Greenpeace Council in force from time to time.



### **53. Appointment of attorneys**

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- 53.1 The Board may, by power of attorney, appoint any person to be the attorney of the Company for the purposes, with the powers, authorities and discretions vested in or exercisable by the Board for any period and subject to any conditions as they think fit.
- 53.2 Any appointment under Article 53.1 may be made on terms for the protection and convenience of persons dealing with the attorney as the Board think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

### **54. Negotiable instruments**

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- 54.1 All negotiable instruments of the Company must be executed by the persons and in the manner decided by the Board, from time to time.

## **PROCEEDINGS OF THE BOARD**

### **55. Proceedings**

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- 55.1 The Board may meet together for the dispatch of business and adjourn and otherwise regulate their meetings at they think fit.
- 55.2 A director may at any time request a meeting of the Board, and on the request of a director a Company Secretary must convene a meeting of the Board.
- 55.3 Reasonable notice must be given to every director of the place, date and time of every meeting of the Board. 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.

### **56. Meetings by technology**

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- 56.1 For the purposes of the Law, 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 Board meeting:
- (a) video;
  - (b) telephone;
  - (c) electronic mail;
  - (d) any other technology which permits each director to communicate with every other director; or
  - (e) any combination of the technologies described in the above paragraph.
- 56.2 A director may withdraw the consent given under this Article in accordance with the Law.
- 56.3 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:
- (a) the participating directors are, for the purpose of every provision of this Constitution concerning meetings of the directors, taken to be assembled together at a meeting and to be present at that meeting; and
  - (b) all proceedings of those directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were present.

## **57. Quorum at meetings**

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

## **58. Vacancies**

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- 58.1 The Board may act even in the event of a vacancy or vacancies in the office of a director or offices of directors, but if the number of directors is not sufficient to constitute a quorum at a meeting of the Board, the directors may act only to appoint a sufficient number of directors to constitute a quorum.

## **59. Chair of directors**

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- 59.1 In the years in which a Chair is due to be elected, the Board shall meet immediately following the annual general meeting and elect one of their number as their chair.
- 59.2 The Chair must retire from office at the end of the meeting of the Board that follows the third annual general meeting after the chair was elected but may be eligible for election, subject to the provisions of Articles 49.3, 49.4 and 59.3.
- 59.3 A Chair may hold office as Chair for a maximum of two terms, subject to the provisions of Articles 49.3 and 49.4.
- 59.4 The Board may, by resolution passed by at least 75% of Board members present and eligible to vote, remove the Chair from office before the completion of the term for which the Chair was elected.
- 59.5 In the event that the Board removes the Chair from office in accordance with Article 59.4, the Board shall elect one of their number as their chair and the Chair so elected must retire from office at the end of the meeting of the Board that follows the second annual general meeting after the chair was elected.
- 59.6 Where a meeting of the Board is held and:
- (a) a chair has not been elected as provided by Article 59.1; or
  - (b) the chair is not present at the time appointed for the holding of the meeting or does not wish to chair the meeting,

the directors present may elect one of their number to be a chair of the meeting.

## **60. Proceedings at meetings**

---

- 60.1 Subject to this Constitution, questions arising at a meeting of the Board are decided by a majority of votes of directors present and voting and for all purposes any such decision is taken to be a decision of the Board.
- 60.2 In the case of an equality of votes, the chair of the meeting has a casting vote in addition to the chair's deliberative vote.

## **61. Material personal interests**

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- 61.1 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.
- 61.2 In relation to a contract or arrangement in which a director has a material personal interest:

- (a) the fact that the director signed the document evidencing the contract or arrangement will not in any way affect its validity;
  - (b) a contract or arrangement made by the Company or any related body corporate with a director may not be avoided merely because the director is a party to the contract or arrangement or otherwise interested in it; and
  - (c) the director will not be liable to account to the company for any profit derived in respect of the contract or arrangement merely because of the director's office or the fiduciary relationship it entails.
- 61.3 Subject to Article 61.4, a director who has a material personal interest in a matter that relates to the affairs of the Company must give the Board notice of his or her interest.
- 61.4 A director with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:
- (a) if all of the following conditions are met;
    - (i) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
    - (ii) if a person who was not a director at the time the notice was given is appointed as the director, the notice is given to that person; and
    - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
  - (b) if the director has given a standing notice of the nature and extent of the interests in accordance with the Law then that standing notice is still effective in relation to the interests; or
  - (c) as otherwise permitted under the Law.
- 61.5 Notices of material personal interest given by directors must:
- (a) give details of the nature and extent of the director's interest and the relation of the interest to the affairs of the Company;
  - (b) be given at a directors meeting as soon as practicable after the director becomes aware of their interest in the matter; and
  - (c) be recorded in the minutes of the directors' meeting at which the notice is given.
- 61.6 A director who has a material personal interest in a matter that is being considered at a Board meeting:
- (a) must not be present while the matter is being considered at the meeting or vote on the matter, except if the material personal interest is a matter that is not required to be disclosed under this Article or under the Law; or
  - (b) if the directors who do not have a material personal interest in the matter have passed a resolution that states that those directors are satisfied that the interest should not disqualify the director from voting or being present; or
  - (c) as otherwise permitted under the Law.
- 61.7 Nothing in this Article affects the duty of a director:

- (a) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the directors' duties or interests as the director, to declare at a meeting of directors, the fact and the nature, character and extent of the conflict; or
- (b) to comply with the Law.

## **62. Disclosure of interest**

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- 62.1 The director is not disqualified by the director's office from contracting with the Company in any capacity.
- 62.2 A contract or arrangement made by the Company with a director or in which a director is in any way directly or indirectly interested may not be avoided merely because the director is a party to or interested in.
- 62.3 A director is not liable to account to the Company for any profit derived in respect of a matter in which the director has the material personal interest, merely because of the director's office or the fiduciary relationship it entails, if the director:
- (a) declared the director's interests in the matter as soon as practicable after the relevant facts have come to the director's knowledge; and
  - (b) not contravened this Constitution or the Law in relation to the matter.
- 62.4 A general notice stating:
- (a) that the director is an officer or member of a specified body corporate or firm; and
  - (b) the nature and extent of the director's interest in that body corporate or firm is in a matter involving the Company in that body corporate or firm, is, in relation to a matter involving the company in that body corporate or firm, a sufficient declaration of the director's interest, provided the extent of that interest is at the time of first consideration of the matter by the directors no greater than was stated in the notice.
- 62.5 Subject to the Law, a director may vote in respect of a matter in which that director has a material interest.
- 62.6 If the provisions of this Article and the Law have been observed by any director with regard to any contract or arrangement in which the director is in any way interested, the fact that the director signed the document evidencing the contract or arrangement does not in any way effect its validity.
- 62.7 A director may not hold any office of employment in the Company (other than auditor) in addition to holding office as a director.

## **63. Delegation**

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- 63.1 The directors may delegate any of their powers in accordance with the Law.

## **64. Committees**

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- 64.1 The Board may delegate its powers to a committee or committees consisting of such number of them and/or other persons, as they think fit. A committee may consist of one or more persons.
- 64.2 A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Board. A power so exercised is taken to be exercised by the Board.

- 64.3 Articles 55, 56, 58 and 60 apply to any committee as if each reference in those Articles to the Board was a reference to the members of the committee and each reference to a meeting of the Board was to a meeting of the committee.
- 64.4 The number of members whose presence at a meeting of the committee is necessary to constitute a quorum is the number determined by the Board and, if not so determined, is 2. Unless the Board determines otherwise, the quorum need only be present at the time when the meeting proceeds to business.
- 64.5 The minutes of all the proceedings and decisions of every committee must be made, entered and signed in the same manner in all respects as minutes of proceedings of the directors are required by the Law to be made, entered and signed.

## **65. Written resolutions**

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- 65.1 If a document:
- (a) is sent to all entitled to receive notice of a meeting at which a resolution could be put;
  - (b) contains a statement that the signatories to it are in favour of that resolution;
  - (c) the terms of the resolution are set out or identified in the document; and
  - (d) has been 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 directors and the document has effect as a minute of the resolution.
- 65.2 For the purposes of Article 65.1:
- (a) 2 or more separate documents containing statements in identical terms each of which is signed by one or more directors are together 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; and
  - (b) a fax which is received by the Company or an agent of the Company and is sent for or on behalf of a director is taken to be signed by that director not later than the time of receipt of the fax by the Company or its agent in legible form.

## **66. Defects in appointments**

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- 66.1 All acts done by any meeting of the Board, committee of directors, or person acting as a director are as valid as if each person was duly appointed and qualified to be a director or a member of the committee.
- 66.2 Article 66.1 applies even if it is afterwards discovered that there was some defect in the appointment of a person to be a director or a member of a committee or to act as a director or that a person so appointed was disqualified.

## **CHIEF EXECUTIVE OFFICER**

### **67. Power to appoint chief executive officer**

---

- 67.1 The Board may appoint a person to the office of chief executive officer for the period and on the terms, as they think fit. Subject to the terms of any agreement entered into in a particular case, the Board may at any time revoke any appointment.

## **68. Delegation of powers to chief executive officer**

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- 68.1 The Board may, on the terms and conditions and with any restrictions as it thinks fit, confer on a chief executive officer any of the powers exercisable by it.
- 68.2 Any powers so conferred may be concurrent with the powers of the Board.
- 68.3 The Board may at any time withdraw or vary any of the powers conferred on a chief executive officer.

## **SECRETARIES AND OTHER OFFICERS**

### **69. Secretaries**

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- 69.1 A Company Secretary of the Company holds office on the terms and conditions, as to remuneration and otherwise, as the Board decides.
- 69.2 Where the Company Secretary is an employee of the Company the terms and conditions of the appointment shall not be less than those specified by any applicable enterprise agreement in force from time to time.
- 69.3 The Board may at any time terminate the appointment of a Company Secretary.

### **70. Other officers**

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- 70.1 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 director, to any position or positions created under paragraph (a).
- 70.2 The Board at any time may terminate the appointment of a person holding a position created under Article 70.1 and may abolish the position.

## **SEALS AND EXECUTING DOCUMENTS**

### **71. Seals and their use**

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- 71.1 The Company may have a common seal. If the Company has a common seal it may also have a duplicate common seal.
- 71.2 A Seal may be used only by the authority of the Board, or of a committee of the Board authorised by the Board to authorise the use of the Seal. Every document to which the Seal is affixed must be signed by:
- (a) 2 directors; or
  - (b) a director and a Company Secretary (or another person appointed by the directors to countersign that document or a class of documents in which that document is included).
- 71.3 The Company Secretary shall report any affixing of the Seal to the next meeting of the Board.
- 71.4 This Article does not limit the ways in which the Company may execute a document.

## **INSPECTION OF RECORDS**

### **72. Inspection of records**

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- 72.1 The Board may authorise a General Assembly member to inspect the books of the Company to the extent, at the time and places and under the conditions, the Board considers appropriate.
- 72.2 A General Assembly 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 Board.

## **NOTICES**

### **73. Notices generally**

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- 73.1 Any General Assembly 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.
- 73.2 A notice may be given by the Company to any General Assembly member by:
- (a) serving it on the member personally;
  - (b) sending it by post to the member or leaving it at the member's address as shown in the register or the address supplied by the member to the Company for the giving of notices;
  - (c) serving it in any manner contemplated in this Article 73.2 on a member's attorney as specified by the member in a notice given under Article 73.3;
  - (d) fax to the fax number supplied by the member to the Company for the giving of notices;  
or
  - (e) transmitting it electronically to the electronic mail address given by the member to the Company for giving notices.
- 73.3 A General Assembly member may, by written notice to the Company Secretary left at or sent to the registered office, require that all notices to be given by the Company or the Board be served on the member's attorney at an address specified in the notice.
- 73.4 Notice to a General Assembly member whose address for notices is outside Australia must be sent by airmail, fax or electronic mail.
- 73.5 Where a notice is sent by post, service of the notice is taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected on the day after its posting.
- 73.6 Where a notice is sent by fax or electronic transmission, service of the notice is taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the day it is sent.

### **74. Notices of general meeting**

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- 74.1 Notice of every general meeting must be given in the manner authorised by Article 73.2:
- (a) to every General Assembly member and to each director; and
  - (b) to the auditor to the Company (if any).
- 74.2 No other person is entitled to receive notice of general meetings.

## **WINDING UP**

### **75. Winding up**

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- 75.1 If, on the winding up or dissolution of the Company by any means and for any reason, there remains any property, after the satisfaction of all the Company's debts and liabilities, the property must not be paid to or distributed among the members of the Company, but must be given or transferred to:
- (a) one or more institutions selected by the members of the General Assembly at or before the dissolution of the Company:
    - (i) having objects similar to the objects of the Company; and
    - (ii) whose constitution prohibits the distribution of its or their income and property to an extent at least as great as that imposed on the Company under Article 8; or
  - (b) if there are no institutions meeting the requirements of paragraph (a), to one or more other institutions, associations or bodies selected by the members of the General Assembly at or before the dissolution of the Company, the objects of which are the promotion of charity and gifts to which are allowable deductions under the *Income Tax Assessment Act 1997*; or
  - (c) if the General Assembly members do not make a selection pursuant to paragraphs (a) or (b) for any reason, to one or more institutions, associations or bodies meeting the requirements of either paragraphs (a) or (b) selected by the Board.

## **INDEMNITY**

### **76. Indemnity**

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- 76.1 To the extent permitted by law and without limiting the powers of the Company, the Company must indemnify each person who is, or has been, a director or Company Secretary of the Company against any liability which results from facts or circumstances relating to the person serving or having served as a director, Company Secretary or employee in relation to the Company:
- (a) other than:
    - (i) a liability owed to the Company or a related body corporate;
    - (ii) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H; or
    - (iii) 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 (a) does not apply to a liability for legal costs).
- (b) other than for legal costs incurred in defending an action for liability if the costs are incurred:
    - (i) in defending or resisting civil proceedings in which the person is found to have a liability for which they could not be indemnified under paragraph (1)(a); or
    - (ii) in defending or resisting criminal proceedings in which the person is found guilty; or



- (iii) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the Court to be established; or
- (iv) in connection with proceedings for relief to the person under the Law in which the Court denies the relief.

Paragraph (b)(iii) 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.

76.2 To the extent permitted by Law and without limiting the powers of the Company, the Board may authorise the Company to, and the Company may enter into any:

- (a) documentary indemnity in favour of; or
- (b) insurance policy for the benefit of,

a person who is, or has been, a director, Company Secretary, auditor, employee or other officer of the company or of a subsidiary of the Company, which indemnity or insurance policy may be in such terms as the Board approves and, in particular, may apply to acts or omissions prior to or after the time of entering into the indemnity or the policy.

76.3 The benefit of any indemnity previously given to any person in respect of liabilities (including in this Constitution) is not affected by this Article or by the deletion of any Article containing such indemnity.

76.4 The benefit of each indemnity given in paragraph (1) continues, even after its terms or the terms of this Article are modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modifications or deletion.

## **MISCELLANEOUS**

### **77. Financial year**

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77.1 The financial year of the Company shall end on 31 December in each year.

### **78. Internal disputes**

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78.1 The Board shall ensure that a mechanism is established for resolving disputes within membership of the General Assembly, which may include:

- (a) the appointment of an independent person to arbitrate or mediate in the dispute;
- (b) a process to bring the parties together to resolve the dispute at an early stage;
- (c) a process to ensure that all parties receive a full and fair opportunity of presenting their case;
- (d) referral of the matter to a Community Justice Centre or similar body.

### **79. Complaints**

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79.1 The Board shall ensure that the Chief Executive Officer establishes a mechanism that will properly and effectively deal with complaints made by members of the public and grievances by employees of the Company.

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