



## Constitution for

# Friends of the National Arboretum Canberra Incorporated

May 2024

## NAME

1. The name of the Association is:

**Friends of the National Arboretum Canberra Incorporated.**

## DEFINITIONS

2. In this Constitution:

- (a) **'Act'** means *the Associations Incorporation Act 1991 (ACT)*, as amended from time to time;
- (b) **'Approved Purposes'** means those purposes set out in Rule 4 of this Constitution.
- (c) **'Association'** means the Friends of the National Arboretum Canberra Incorporated;
- (d) **'Arboretum'** means the National Arboretum Canberra;
- (e) **'Constitution'** means this Constitution and all supplementary substituted or amending Constitutions for the time being in force;
- (f) **'Council'** means the Council of the Association;
- (g) **'Council member'** is a financial member who is elected or co-opted to be on the Council;
- (h) **'Financial Year'** means the period from 1 January of a given year to 31 December in the same year;
- (i) **'Member'** means a person who has met the relevant requirements determined by the Council;
- (j) **'Public Fund'** means the Friends of the National Arboretum Canberra Public Fund established, operated and maintained by the Friends of the National Arboretum Canberra Incorporated;
- (k) **'Regulation'** means *the Associations Incorporation Regulation 1991 (ACT)*, as amended from time to time;
- (l) **'Territory'** means the Australian Capital Territory.

*Rule ## - refers to the numbered Rule in this document.*

## **INTERPRETATION**

3. In this Constitution:
  - (a) words importing one gender include all genders;
  - (b) words importing the singular include the plural;
  - (c) headings have been inserted for ease of reference only and do not affect the interpretation of this Constitution;
  - (d) references to any statute include every amendment, re-enactment or replacement of that statute.

## **PURPOSE**

4. The Association is a non-profit, community-based organisation established for the purposes of:
  - (a) Supporting the development of the Arboretum;
  - (b) Facilitating community use of the Arboretum for natural environmental, cultural, artistic, learning, research, recreational and educational purposes;
  - (c) Fostering among members and the public a sense of involvement with, and understanding of, the collections and operations of the Arboretum;
  - (d) Inviting and raising public monetary contributions for the purpose of the Association;
  - (e) Creating and managing a Public Fund;
  - (f) Maintenance of the Public Fund for the purpose of supporting the natural environmental, cultural, artistic, learning, research, recreational and educational goals of the Arboretum.

## **ACTIVITIES OF THE ASSOCIATION**

5. The activities of the Association may include (but are not limited to):
  - (a) Holding meetings;
  - (b) Organising and conducting activities in the name of the Association;
  - (c) Carrying on its activities in the Australian Capital Territory, carrying on activities in other parts of Australia and establishing branches of the Association in any other State or Territory of Australia;
  - (d) Paying all costs for the promotion, formation and operation of the Association;
  - (e) Raising funds for the purpose of achieving the purpose of the Association:
    - (i) by borrowing on such terms and on such security as may be thought fit by the Association; or

- (ii) by guarantees, subscriptions, sponsorships (commercial or otherwise), gifts, donations or undertaking any other enterprise as may be thought fit by the Association; or
    - (iii) in response to Government grants or private institution grants (commercial or otherwise).
  - (f) The creation of a Public Fund or Funds to support the cultural, natural environmental or other objects of the Association.
  - (g) Acceptance of funds raised in accordance with rule 5(e)(i) either unconditionally or subject to such conditions as may be agreed, provided that no such conditions will be inconsistent with the objects of the Association.
  - (h) The establishment of specialist sub-committee/s within the Association to cater for particular aspects of the arboretum and gardens.
  - (i) The subscription to, membership of, or co-operation with any other Association, organisation or otherwise, whether incorporated or not, whose objects are determined by the Association to be similar to those of the Association.
  - (j) The acquisition, holding, purchase, lease, sale, exchange, mortgage or disposal in any other way of any form of property real or personal, for the purpose of Association.
  - (k) Publishing and/or production of such material as is desirable for the promotion of the objects and purposes of the Association.
  - (l) Invest and/or dealing with all or any monies of the Association not immediately required for any of its objects or purposes in such manner as the Association determines.
  - (m) To do all such other lawful things as are incidental or conducive to the attainment of any of the objects and purposes specific in the foregoing provision of Rules 4 and 5.
6. The assets and income of the Association will be applied solely in furtherance of its above-mentioned purposes, and no portion will be distributed directly or indirectly to the members of the Association except as bona fide compensation for service rendered or expenses incurred on behalf of the Association.
7. The income and property of the Association will be applied solely in and about the places within the Commonwealth of Australia and in such manner as may be approved by the Council from time to time.
8. The Association has the legal capacity and the powers of a body corporate and a natural person.

## **PUBLIC FUND**

9. The Association will establish, operate and maintain the National Arboretum Canberra Public Fund.
10. The purpose of the Public Fund is to:
  - (a) raise funds for the purpose of achieving the objects of the Association; and
  - (b) to separately identify and account for all gifts, donations and contributions of money and property received by the Association; and
  - (c) keep separate the money and property of the Public Fund from that of the rest of the Association; and
  - (d) account for it accordingly.
11. The Association will establish a separate bank account to separately identify and account for the property and money of the Public Fund.
12. The Association will, at all times, credit to the Public Fund the following gifts:
  - (a) all gifts of money or property made for the Approved Purposes, including testamentary gifts, tax deductible gifts, non-tax deductible gifts and distributions from other charities or deductible gift recipients;
  - (b) the whole amount of deductible contributions made to a fundraising event staged to raise funds for the Approved Purposes;
  - (c) money received because of these gifts and deductible contributions, including proceeds from the sale of gifted property, and investment returns from money or property that continues to be part of the Public Fund.
13. Amounts that are not gifts or deductible contributions will not be credited to the Public Fund, including:
  - (a) Receipts from sponsorships or commercial activities; and
  - (b) Proceeds of raffles, charity auctions, dinners and the like where the proceeds are not deductible contributions.
14. The Association, by Council resolution, will implement procedures to ensure that the Public Fund is used correctly. If money or property is incorrectly received, it must be removed from the Public Fund as soon as practically possible, with the amounts adjusted and noted accordingly.
15. The Public Fund will only be used in furtherance of the Approved Purposes. Acceptable uses of the Public Fund include:
  - (a) Transferring money or property to the Association for the Association's current and continuing use;

- (b) Purchases of property or services for use by the Association for an Authorised Purpose;
- (c) Reasonable costs of managing the Public Fund, including bank charges, stationery, accounting and audit fees relating expressly to the Public Fund;
- (d) Professional fees for fundraising;
- (e) Investment, only if it is consistent with carrying out the authorised purpose/s of the Association.

## **PATRONAGE**

16. The Council may appoint patron/s to advance the aims of the Association.

## **OFFICES**

17. The offices of the Association will be situated in Canberra in the Australian Capital Territory.

## **MEMBERSHIP**

18. Membership of the Association

- (a) Membership is open to any person, organization or body corporate committed to the aims of the Association.
- (b) Membership is open to all members of the community and no qualifications are required for membership.
- (c) An application for membership of the Association must be made in the manner as resolved by the Council, this currently must be in writing or by means of electronic application, and must include the applicant's name and contact details and a statement that the applicant supports the Association's objects and agrees to comply with the Act and the Association's rules.

19. Membership

- (a) A person's membership begins on the day the Association receives the person's application and payment of any membership fee which may be required.
- (b) Membership fees, including any joining fee, will be determined by Council from time to time.
- (c) The due date for the renewal of a membership fee is the anniversary of the previous payment.

20. Conditions of Membership

- (a) Membership categories will be created by resolution of the Council. Council will consult with members at a general meeting prior to the implementation of any changes.
- (b) A member will be a financial member only if all subscriptions and dues payable, including the current subscription, have been paid within three months of the due date.

21. Membership Categories

- (a) Membership will be voting or non-voting.
- (b) Voting members will include paid-up members and honorary members. Each voting member will have one vote, excepting household or corporate categories of memberships who may have up to two votes if two representatives are present at the meeting;
- (c) Non-voting members will include ex-officio members.

22. Membership Entitlements not Transferable

A right, privilege or obligation that a person has because of being a Member:

- (a) cannot be transferred or transmitted to another person; and
- (b) terminates on cessation of the person's membership.

23. Cessation of Membership

A person ceases to be a member of the Association if the person:

- (a) dies or, for a corporation, is wound up; or
- (b) resigns from membership of the Association; or
- (c) is expelled from the Association ; or
- (d) fails to renew membership of the Association.

24. Resignation of Membership

- (a) A member is not entitled to resign from membership of the Association except in accordance with this Rule.
- (b) A member who has paid all amounts payable by the Member to the Association may resign from the membership of the Association by first giving notice (of not less than 2 months, or if the Council has determined a shorter period, that shorter period) in writing to the Secretary of the Member's intention to resign and, at the end of the period of notice, the member ceases to be a member.
- (c) If a person ceases to be a Member, the Secretary must make an appropriate entry in the register of members recording the date the member ceased to be a Member.

25. Fees, Subscriptions etc.

- (a) The annual membership fee is payable on the anniversary of the previous payment of membership fee.

- (b) The annual membership fee will be determined by resolution of the Council. Council will consult with members at a general meeting prior to the implementation of any changes to the annual membership fee.

26. Members' Liabilities

The liability of a Member to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of the winding up of the Association is limited to the amount (if any) unpaid by the Member in relation to membership of the Association as required by Rule 19

- a) **Disciplining of Members**  
Where the conduct of a member has been inconsistent with the aims of the Association, the Council may, by resolution, terminate the membership. Before deciding to terminate a membership the Council must give written notice to the member providing details of the proposed disciplinary action, the grounds for that proposed disciplinary action in accordance with the Friends Dispute Resolution Procedure and the process that the Council will follow.
- b) The written notice must include an invitation for the member to respond by written and/or oral submission within a period of no less than 7 days, about the proposed disciplinary action and the grounds for the proposed disciplinary action.
- c) As soon as practical after the submission period has ended and the Council has made a decision, the Council must give the member written notice of the decision and the reasons for it.

27. The decision can be appealed for special resolution at a general meeting.

## **REGISTER OF MEMBERSHIP**

- 28. The Secretary will ensure that a register of Members is kept showing their names, class of membership and contact details.
- 29. It will be the responsibility of each member to notify changes of details relating to each member to the Secretary.

## **COUNCIL OF THE ASSOCIATION**

- 30. The Council will be responsible for the achievement of the aims of the Association, for the development of programs, and the running of activities.
- 31. Membership of the Council
  - (a) The Council consists of:
    - (i) the Executive Committee of the Association; and
    - (ii) up to 5 ordinary Council members; and

- (iii) A representative of each specialist sub-committee of the Association (not already a Council member), as agreed by resolution of Council; and
    - (iv) The Council may invite, at its discretion, a member of the Arboretum staff to Council with a particular focus on the alignment of NAC business and operational matters with the activities of the Friends of the NAC. The invited NAC staff member will not be a member of Council and thereby not have any Council responsibilities and will not vote, but must abide by Council protocols. The Council may revoke this invitation by a majority vote of the Council.
  - (b) The Executive Committee of the Association consists of:
    - (i) the Chairperson; and
    - (ii) the Deputy-Chairperson; and
    - (iii) the Secretary; and
    - (iv) the Treasurer.
32. Members of the Council will be elected at each Annual General Meeting, from the Membership, for a term of 2 years.
33. Election of Council Members
- (a) Nominations of candidates for election to the Executive Committee of the Association or as ordinary Council members must be:
    - (i) made in writing; and
    - (ii) signed by 2 members of the Association; and
    - (iii) accompanied by the written consent of the candidate (which may be endorsed on the nomination form); and
    - (iv) given to the Secretary before the commencement of the annual general meeting at which the election is to take place.
  - (b) If insufficient nominations are received to fill all vacancies on the Council, the candidates nominated are taken to be elected and further nominations may be received at the annual general meeting.
  - (c) If insufficient further nominations are received, any vacant positions remaining on the Council are taken to be vacancies.
  - (d) If the number of nominations received is equal to the number of vacancies to be filled, the people nominated are taken to be elected.
  - (e) If the number of nominations received exceeds the number of vacancies to be filled, a ballot must be held.
  - (f) The ballot for the election of Executive Council members and ordinary Council members must be conducted at the annual general meeting in the way the Council may direct.



- (g) A list of candidates' names, with the proposers' and seconders' names, will be announced at the beginning of the AGM at which the election is to take place;
  - (h) Each Member present in person at the AGM will be entitled to make a single vote for each vacant position.
34. The Association may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of Council Members.
35. Removal of Council Members
- (a) The Association in a general meeting may by resolution, subject to the relevant section of the Act, remove any member of the Council from the office of member of the Council before the end of the member's term of office.
36. Permanent Vacancies
- (a) A permanent vacancy arises when a Council member:
    - (i) dies; or
    - (ii) ceases to be a member of the Association; or
    - (iii) suffers from mental incapacity; or
    - (iv) resigns his or her office by writing under his or her hand addressed to the Council; or
    - (v) is removed from office in accordance with Rule 35; or
    - (vi) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* (Cth); or
    - (vii) does not attend two consecutive meetings without the leave of Council.
  - (b) If there is a permanent vacancy in the membership of the Council, the Council may appoint a member of the Association to fill the vacancy according to clause 37 (a).
37. Casual Vacancies
- (a) A casual vacancy arises when a Council member advises the Council that he or she is unable to attend up to 2 meetings or attend for a defined period (of less than 2 years) as accepted by the Council.
  - (b) Casual vacancies in the Council may be filled by a co-option of financial members by the Council as per Clause 38 (a).
38. The Council may co-opt financial members to:
- (a) fill a permanent or casual vacancy on the Council;
  - (b) perform certain duties; or
  - (c) be part of sub-committees as and when required.

39. Where a financial Member has been co-opted to be an Executive Committee member under rule 38 they will hold office until the Annual General Meeting next following his or her co-option

## **POWERS OF THE COUNCIL**

40. The Council, subject to the Act, Regulation and this Constitution, and to any resolution passed by the Association in general meeting:
- (a) controls and manages the affairs of the Association; and
  - (b) may exercise all functions that may be exercised by the Association other than those functions that are required by these rules to be exercised by the Association in general meeting; and
  - (c) has power to perform all acts and do all things that appear to the Council to be necessary or desirable for the proper management of the affairs of the Association.
41. The Council may, in its complete discretion, establish sub-committees to:
- (a) advise the Council on aspects of the management of the Association; or
  - (b) support particular focussed interests of members.
42. The rules governing such sub-committees will be covered by by-laws made by the Council.
43. Sub-committees may make recommendations to the Council but may not, of themselves, make decisions binding the Council or the Association.

## **COUNCIL MINUTES**

44. The Council will keep minutes of:
- (a) all appointments of officers;
  - (b) the names of members of the Council who attend Council and general meetings; and
  - (c) all proceedings of Council and general meetings.

## **CHAIR**

45. The functions of the Chair include:
- (a) Chairing Council meetings and general meetings (including annual general meetings); and
  - (b) Exercising any other function given to the chair:
    - (i) Under the Act or the Association's rules; or
    - (ii) By the Council or the members to achieve the Association's objects.

## **DEPUTY CHAIR**

46. The functions of the deputy chair include:
- (a) Exercising the functions of the Chair if the Chair is unavailable to exercise those functions for any reason; and
  - (b) Exercising any other function given to the deputy chair:
    - (i) Under the Act or the Association's rules; or
    - (ii) By the Council or the members to achieve the Association's objects.

## **SECRETARY**

47. The Secretary must, as soon as practicable after being appointed as Secretary, notify the Association of his or her address.
48. The secretary must ensure that true written records are kept of the business of the Association including:
- (a) this Constitution; and
  - (b) register of members in accordance with Rule 28; and
  - (c) minutes of all general and Council meetings; and
  - (d) a file of correspondence.
49. The records kept pursuant to Rule 48 must be available for inspection by any Member at a reasonable time and must be held in the custody of the Secretary.
50. The functions of the secretary also include:
- (a) exercising any other function given to the secretary—
    - (i) under the Act or the Association's rules; or
    - (ii) by the Council or the members to achieve the Association's objects.
51. The secretary must lodge the notice mentioned in the Act, section 62(1) (Notice of changes in council). Note – a Council member must notify the Association of any change of address within 1 month (see Act, s62(2)).

## **TREASURER**

52. The Treasurer must:
- (a) Collect and receive all amounts owing to the Association; and
  - (b) make all payments authorised by the Association; and

- (c) ensure that correct books and accounts are kept showing the financial affairs of the Association with full details of all receipts and expenditure connected with the activities of the Association.
53. Records kept in accordance with Rule 52(c) must be available for inspection by any member at a reasonable time and must be held in the custody of the Treasurer.
54. Prepare an annual statement of accounts for both the Friends and the Public Fund, and present to the members at the annual general meeting as per 52(c) and then lodge with the appropriate authorities (Access Canberra and ACNC).
55. Exercise any other function given to the treasurer:
- (a) under the Act or the Association's rules; or
  - (b) by the Council or the members to achieve the Association's objects.

## **COUNCIL MEETINGS**

56. The Council must meet at least five (5) times in each calendar year at the place and time that the Council may decide.
57. All Council meetings will be open to all members to attend.
58. Council meetings will ordinarily be called by:
- (a) the Chair;
  - (b) any 2 Council members; or
  - (c) 10 ordinary members of the Association in writing to the Executive Committee.
59. Additional meetings of the Council may be called by the Secretary:
- (a) at the request of a member of the Executive Committee; or
  - (b) at the request of two or more ordinary Council members.
60. Notice of Council Meetings
- (a) Oral or written notice of a meeting of the Council must be given by the Secretary to each member of the Council at least 48 hours (or any other period that may be unanimously agreed on by the Council) before the time appointed for the holding of the meeting.
  - (b) Notice of a meeting given under Rule 60(a) must specify the general nature of the business to be transacted at the meeting.
61. Chairing of Council Meetings.
- (a) Council Meetings will be chaired by:
    - (i) the Chair; or in their absence
    - (ii) the Deputy-Chair; or in their absence
    - (iii) a nominee of the Council.

- (b) In the absence of both the Chair and the Deputy Chair, both the Chair and the Deputy Chair must be notified about a meeting being called.

62. Quorum for Council Meetings.

- (a) A quorum will be five (5) members of the Council.
- (b) No item of business will be transacted by the Council unless a quorum of members is present.
- (c) If within 30 minutes after the time appointed for the meeting a quorum is not present, the meeting stands adjourned to a time and place to be announced, if this subsequent meeting is not quorate, the meeting is dissolved.

63. Delegation by Council to Sub-Committees.

- (a) The Council may, in writing, delegate to one or more sub-committees (consisting of the member or members of the Association that the Council considers appropriate) the exercise of the functions of the Council that are specified in the instrument, other than:
  - (i) this power of delegation; and
  - (ii) a function that is a function imposed on the Council by the Act, by any other Territory law, or by resolution of the Association in general meeting.
- (b) A function, the exercise of which has been delegated to a sub-committee under this section may, while the delegation remains un-revoked, be exercised from time to time by the sub-committees in accordance with the terms of the delegation.
- (c) A delegation under this section may be made subject to any conditions or limitations about the exercise of any function, or about time or circumstances, that may be specified in the instrument of delegation.
- (d) Despite any delegation under this section, the Council may continue to exercise any function delegated.
- (e) The Council may, in writing, revoke wholly or in part any delegation under this section.
- (f) A sub-committee may meet and adjourn as it considers appropriate.

64. Voting and Decisions

- (a) Questions arising at a meeting of the Council or of any sub-committee appointed by the Council are decided by a majority of the votes of members of the Council or sub-committee present at the meeting in person or virtually.
- (b) Each member present at a meeting of the Council or of any sub-committee appointed by the Council (including the person presiding at the meeting) is entitled to 1 vote but, if the votes on any question are equal, the person chairing the meeting may exercise a second or casting vote.
- (c) At the request of five (5) members present at a meeting, a secret ballot will be held.

## **CONFLICT OF INTEREST**

65. A member of Council who has a personal interest in any contract or arrangement made or proposed to be made with the Association:
- (a) must advise the Council of the nature and extent of the personal interest at the first meeting of the Council at which the contract or arrangement is first taken into consideration if the interest then exists; or, in any other case, at the first meeting of the Council after the emergence of the interest;
  - (b) must not vote on the matter as a member of the Council; and
  - (c) must not be present while the matter is being considered at the meeting unless agreed by the meeting.

## **GENERAL MEETINGS**

66. All meetings, other than annual general meetings will be called general meetings.
67. Holding of Annual General Meeting.
- (a) With the exception of the first annual general meeting of the Association, the Association must, at least once in each calendar year and within 5 months after the end of each financial year of the Association, call an annual general meeting of its members.
  - (b) The annual general meeting of the Association must, subject to the Act, be called on the date and at the place and time that the Council considers appropriate.
  - (c) In addition to any other business that may be transacted at an annual general meeting, the business of an annual general meeting is:
    - (i) to confirm the minutes of the last annual general meeting; and
    - (ii) to receive from the Council reports on the activities of the Association during the last financial year; and
    - (iii) to elect members of the Council, including Executive Committee members; and
    - (iv) to receive and consider the statement of accounts and the reports that are required to be submitted to members under the Act, section 73(1).
  - (d) The provisional agenda of the annual general meeting will always include an item under which any other business may be raised by those present.
  - (e) An annual general meeting must be specified as such in the notice of the meeting, that notice conforming with the requirements of Rule 92.
  - (f) An annual general meeting must be conducted in accordance with the provision of this part.
68. Holding of General Meetings.

- (a) The Council may, whenever it considers appropriate, call a general meeting of the Association by Council resolution.
- (b) The Council must, on the requisition in writing of not less than 10 Members, call a general meeting of the Association.
- (c) Virtual attendance – A member electing to attend a general meeting virtually must advise the Secretary of their intention to attend virtually at least 7 days before the meeting.
- (d) A requisition of Members for a general meeting must:
  - (i) state the purpose or purposes of the meeting; and
  - (ii) be signed by the members making the requisition; and
  - (iii) be lodged with the Secretary; and
  - (iv) consist of one or more documents each signed by 1 or more of the members making the requisition.
- (e) If the Council fails to call a general meeting within 1 month after the date when a requisition of members for the meeting is lodged with the Secretary, any 1 or more of the members who made the requisition may call a general meeting to be held not later than 3 months after that date.
- (f) A general meeting called by a Member or Members mentioned in Rule 68(e) must be called as nearly as is practicable in the same way as general meetings are called by the Council.

69. Notice of General Meetings.

- (a) Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the Association, the Secretary must, at least 14 days before the date fixed for the holding of the general meeting, send by post or e-mail to each member at the member's address or e-mail address appearing in the register of members, a notice specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (b) If the nature of the business proposed to be dealt with at a general meeting requires a Special Resolution of the Association, the Secretary must, at least 21 days before the date fixed for the holding of the general meeting, send notice to each member in the way provided in Rule 69(a) specifying, in addition to the matter required under that subsection, the intention to propose the resolution as a Special Resolution.
- (c) **Note: A Special Resolution is a resolution requiring 75% of the votes to pass – cf S30 Note 1 of the Associations Incorporation Regulation 2023.** A Member desiring to bring any business ('business' is an item requiring a vote) before a general meeting must give written notice of that business to the Secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.

- (d) The chair of a general meeting must ensure that the only business conducted at the meeting is—
- i. the business stated in the general meeting notice for the meeting; and
  - ii. decisions about the procedure of the meeting.

**Examples—decisions about procedure**

- election of chair for the general meeting
- decision to adjourn the general meeting.

70. Quorum at General Meetings.

- (a) No item of business may be transacted at a general meeting unless a quorum of members entitled under these rules to vote is present during the time the meeting is considering that item.
- (b) 10 members present in person (who are entitled under these rules to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.
- (c) If within 30 minutes after the appointed time for the start of a general meeting a quorum is not present, the meeting if called on the requisition of Members is dissolved and in any other case stands adjourned to a time and place is specified at the time of adjournment by the person presiding at the meeting or communicated by written notice to Members given before the day to which the meeting is adjourned.
- (d) If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the start of the meeting, the meeting is dissolved.

71. Chairing of General Meetings.

- (a) The Chairperson of the Council, or in the absence of the Chairperson, the Deputy Chairperson, presides at each general meeting of the Association.
- (b) If neither the Chairperson nor the Deputy Chairperson is present within 30 minutes after the time appointed for the holding of the meeting, or chooses not to act as chair of the meeting, then the Members present will elect one of their numbers to act as the person chairing of the meeting.
- (c) Failing the appointment of a Chair for the meeting, the meeting is dissolved.

72. Voting at General Meetings.

- (a) At any general meeting on any resolution or special resolution, whether by show of hands or poll, each Member holds one vote (except as provided in 72 (f)). A special resolution requires at least 21 days' notice and needs to be passed with at least 75% of the votes to pass.
- (b) All votes must be given personally and proxy voting is not allowed.



- (c) A question arising at a general meeting of the Association is to be decided on a show of hands and, unless before or on the declaration of the show of hands a poll is demanded, a declaration by the person presiding that a resolution has been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the Association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (d) At a general meeting of the Association, a poll may be demanded by the person presiding or by not less than 5 members present in person at the meeting.
- (e) If the poll is demanded at a general meeting, the poll must be taken:
  - (i) immediately if the poll relates to the election of the person to preside at the meeting or to the question of an adjournment; or
  - (ii) in any other case—in the way and at the time before the close of the meeting that the person presiding directs, and the resolution of the poll on the matter is taken to be the resolution of the meeting on that matter.
- (f) If the votes on a question at a general meeting are equal, the person chairing the meeting is entitled to exercise a second or casting vote.
- (g) Only current members of the Association are entitled to vote at any general meeting of the Association.

## **PUBLIC OFFICER**

- 73. The Council will, within fourteen (14) days after the incorporation of the Association, appoint a resident of the Australian Capital Territory to be the Public Officer.
- 74. The office of the Public Officer will become vacant if the person holding that office:
  - (a) dies;
  - (b) becomes bankrupt or applies to take or takes advantage of any law relating to bankrupt or insolvent creditors or compounds with his or her creditors;
  - (c) becomes of unsound mind;
  - (d) resigns his or her office by writing under his or her hand addressed to the Council;
  - (e) ceases to be a resident of the Territory; or,
  - (f) ceases to be a member of the Association.
- 75. A vacancy will be filled by decision of the Council within fourteen (14) days and the relevant ACT authority advised.

## **BY-LAWS**

- 76. The Council may, at its discretion, make or amend By-Laws for the achievement of the aims of the Association and to implement this Constitution.

77. All By-Laws:
- (a) are subject to the Act and Regulation; and
  - (b) are subject to the Constitution; and
  - (c) bind members as if they were part of the Constitution; and
  - (d) may be amended or repealed by:
    - (i) the Council; or
    - (ii) the Association in general meeting.

## **ACCOUNTS**

78. Subject to any resolution passed by the Association in general meeting, the funds of the Association must be used for the Approved Purposes set out in Rule 4 of this Constitution in the way that the Council decides.
79. The Association will maintain such bank accounts and engage in such financial transactions as are authorised by the Council.
80. Funds can be raised by means as Council authorises.
81. The Association will keep true written financial records of:
- (a) all sums of money received and expended by the Association and the reason for the receipt or expenditure; and
  - (b) the property, credits and liabilities of the Association.
82. The assets and funds of the Association will be used solely to further the objects of the Association. No portion of these funds will be paid or distributed to members except as compensation for wages or salary of employees or for expenses.
83. All money received by the Association must be deposited as soon as practicable and without deduction to the credit of the Association's bank account.
84. The Association must, as soon as practicable after receiving any money, issue an appropriate receipt.
85. The Council may determine how a negotiable instrument and all receipts for money paid to the Association will be signed, drawn, accepted, endorsed, or otherwise executed.
86. All cheques, drafts, bills of exchange promissory notes and other negotiable instruments must be signed by any 2 members of the Council, being members of the Council authorised to do so by the Council.
87. The Association may pay out money from the bank via an arrangement that is endorsed by the signatures of any two of the Executive Committee. The Treasurer must keep a copy of such arrangements on file.

## **AUDITOR**

88. The Association will appoint an Auditor.
89. An audited financial statement will be prepared each financial year for presentation to the annual

general meeting.

## **COMMON SEAL**

90. The Council will obtain a seal for the Association which will be kept in the custody of the Secretary.
91. The common seal must not be attached to any instrument except by the authority of the Council and the attaching of the common seal must be attested by the signatures of 2 members of the Council.

## **NOTICES**

92. The Association may serve a notice on any Member or Officer by:
  - (a) serving it on that member or Officer; or
  - (b) leaving it at or posting it to the Member's or Officer's address as shown on the roll of Members; or
  - (c) with each Member's consent, sent by email to the address supplied by the Member.
93. Notices to Members and Officers will be deemed to be received five (5) working days after posting.
94. A Member or Officer may serve a notice on the Association by:
  - (a) serving it on the Association in accordance with the Act; or
  - (b) leaving it at or posting it to the Association's registered address.
95. Service may be proved by:
  - (a) if the notice was given by the Association, by an Officer of the Association signing a certificate that the letter, envelope, wrapper, fax or email containing the notice was properly addressed, stamped and posted or faxed or emailed; or
  - (b) if the notice was given by a Member or Officer, by the member responsible for service signing a certificate that the letter, envelope, wrapper, fax or email containing the notice was properly addressed, stamped and posted or faxed or emailed.

## **ALTERATION OF THE CONSTITUTION**

96. The Rules of this Constitution may only be altered in accordance with the Act.
97. The Rules set out in this Constitution may be amended at an annual general meeting or a general meeting of the Association by resolution of which not less than 21 days' notice has been given and which is carried by a three quarters majority of those financial Members present. The wording of any proposed amendment contemplated will be included in the notice calling the meeting.
98. Where the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the Association, the Secretary will, at least 21 days before the date fixed for

the holding of the General Meeting, cause notice to be sent by prepaid post or e-mail to each member at the member's address appearing in the register of members, a notice specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting, in addition specifying the intention to propose the resolution as a special resolution. A special resolution must be passed by at least three quarters of those financial members present.

## **DISSOLUTION**

99. The Association will be dissolved:
- (a) at a general meeting convened especially to consider such a question and of which 21 days notice has been given, and upon a vote of a three-quarters majority of members present; or
  - (b) in the event of membership of less than 10 persons.
100. Upon a resolution being passed in accordance with Rule 99(a), all assets on hand, except those assets of a Public Fund, will, after payment of all expenses and liabilities, be vested in the Arboretum pursuant to the Act, Section 92(1)(a), or failing that, to an organisation or institution:
- (a) whose objects are similar to the objects of the Association; and
  - (b) which prohibits the distribution of income or property to its members; and
  - (c) which falls under one or more of the items listed in the tables in subsection 78(4) of the *Income Tax Assessment Act 1936* (Cth).
101. The Members of the Association in a general meeting will decide which organisation or institution, failing the Arboretum, will receive the money or property at or before dissolution. If the members fail to decide, the Supreme Court of the Australian Capital Territory or any other court of competent jurisdiction may decide who will receive the money or property.
102. On the dissolution of the Association, an officer or a member of the Association will not, except as otherwise provided by the Act or the rules of the Association, be taken, only because of being a member or officer, to be liable to contribute to the payment of any debts or other liabilities incurred by the Association, or to the costs, charges or expenses incurred in the course of winding up the Association.

## **DISSOLUTION OF THE PUBLIC FUND**

103. On the dissolution of the Association, assets in the Public Fund will be treated in accordance with the Act.
104. The Public Fund may only be wound up in the following circumstances:
- (a) The Association is no longer endorsed as an ancillary fund with DGR status or
  - (b) The Association is dissolved;
- whichever occurs first.

105. On dissolution of the Public Fund, the surplus assets of the Public Fund must be transferred to another fund, organisation or institution:

- (a) whose objects are similar to the objects of the Association;
- (b) which prohibits the distribution of income or property to its members; and
- (c) which falls under one or more of the items listed in the tables in subsection 78(4) of the *Income Tax Assessment Act 1936* (Cth).

12April 2024 DDC