

Murray Lower Darling Rivers Indigenous Nations
ACN 118 364 079

A Company Limited by Guarantee

Constitution

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Constitution

Murray Lower Darling Rivers Indigenous Nations
ACN 118 364 079
("Company")

1. Definitions and interpretation

1.1 Definitions

In this Constitution, unless the context requires otherwise:

"**Applicant**" has the meaning given to it in clause 4.5(a).

"**Approved Contact**" has the meaning given to it in clause 10.3(a).

"**Board**" means the board of Directors of the Company.

"**Candidate**" has the meaning given in clause 17(a).

"**Chairperson**" means the natural person appointed or elected to perform the duties of chairperson of the Company from time to time.

"**Commissioner**" means the Commissioner of Taxation, a second Commissioner of Taxation or a Deputy Commissioner of Taxation or other delegate of the Commissioner of Taxation for the purposes of the Tax Act.

"**Company**" means the company defined at the beginning of this Constitution.

"**Constitution**" means this constitution as supplemented, substituted or amended from time to time and includes any rules, regulations and by-laws of the Company for the time being in force.

"**Corporations Act**" means the *Corporations Act 2001* (Cth).

"**Cultural Fund**" means the MLDRIN Cultural Fund established and managed under the Cultural Fund Trust Deed.

"**Cultural Fund Trust Deed**" means the deed of trust (as varied by any modification or alteration lawfully made to the deed of trust from time to time) and includes any schedules, which establishes the Cultural Fund.

"**Deputy Chairperson**" means the natural person appointed or elected to perform the duties of deputy chairperson of the Company from time to time.

"**Director**" means a natural person appointed or elected to the position of director of the Company from time to time.

"**Elder**" means, generally, a mature, capable, wise and respected adult of a Nation who has knowledge of that Nation's culture and is recognised and respected by the peoples of that Nation as having that knowledge.

"**Eligible Charity**" means a fund, authority or institution:

- (a) which is charitable at law; and

- (b) gifts or contributions to which are deductible under item 1 of the table in section 30-15 of the Tax Act; and
- (c) if required under the Tax Act, which has objects and purposes similar to the objects and purposes of the Company.

"Environmental Fund" means the MLDRIN Environmental Fund established and managed under the Environmental Fund Trust Deed.

"Environmental Fund Trust Deed" means the deed of trust (as varied by any modification or alteration lawfully made to the deed of trust from time to time) and includes any schedules, which establishes the Environmental Fund.

"Executive" means the natural persons who, together, comprise the executive body of the Company, established under clause 16.1(d).

"Extraordinary Member" has the meaning given in clause 4.1(f).

"Extraordinary Member Applicant" has the meaning given to it in clause 4.8(b).

"Extraordinary Member Application" has the meaning given to it in clause 4.8(b).

"Extraordinary Member Nominee" means, in respect of an Extraordinary Member who is not a natural person, the natural person nominated by an Extraordinary Member (or a Person who is applying to be an Extraordinary Member) that is authorised to exercise all the rights of that Extraordinary Member under this Constitution.

"First Resolution" has the meaning given to that term in clause 9.3(a).

"GST" has the meaning given to that term by Section 195-1 of the GST Act.

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999*.

"Indigenous" means an individual who is indigenous.

"Majority" means greater than 50% of the votes of:

- (a) the Members Present and entitled to vote at a general meeting of Members; and
- (b) the Directors entitled to vote at a Board meeting.

"Member" means a Person who is entered in the Register of Members and includes:

- (a) each Representative Member; and
- (b) each Extraordinary Member.

"Member Application Policy" means the Member application policy to be developed by the Board and approved by Members in accordance with clause 4.4 (as amended from time to time).

"Member Eligibility Criteria" means the eligibility criteria for Representative Members or Extraordinary Members (as applicable) as outlined in the Member Application Policy.

"Member Offence" means a Member (or its Nominee) no longer complies with the relevant Member Eligibility Criteria or an incident or series of incidents in which a Member (or its Nominee):

- (a) does not comply with any part of this Constitution;
- (b) has breached the Code of Conduct;
- (c) does not comply with any of the Company's rules, regulations or by-laws; or
- (d) is guilty of conduct that the Board reasonably considers may harm the interests of the Company in any way.

"Membership" means the rights of a Member to membership of the Company, being the rights attaching to the class of membership conferred on that Member.

"Membership Year" means each period of 12 Months commencing on 1 July and ending on the next ensuing 30 June.

"Month" means a calendar month.

"Murray Lower Darling Basin Authority" means the independent statutory authority responsible for the basin-wide water resource planning and management and includes such other authorities as may replace it from time to time.

"Murray Lower Darling Rivers Indigenous Nations" or "Nations" means:

- (a) the nations of peoples connected by their traditional laws and customs to each of their territorial lands and waters in the Traditional Region, however delineated;
- (b) a body corporate representative of nations referred to in paragraph (a); and
- (c) such other nations of peoples,

in each case as listed on the Register of Nations from time to time, and **"Nation"** means any one of them.

"Nation Application Policy" means the Nation application policy to be developed by the Board and approved by Members in accordance with clause 11.2 (as amended from time to time).

"Nominee" means a Representative Member Nominee and/or an Extraordinary Member Nominee (as the context requires).

"Northern Murray-Darling Basin Aboriginal Nations" means Northern Basin Aboriginal Nations ACN 149 354 512.

"Office" means the Company's registered office.

"Person" includes bodies corporate, associations, firms, entities and natural persons, as the context requires. For the avoidance of doubt, a reference to **"natural person"** or **"individual"** means a natural person or an individual only.

"Present" means, when used in relation to a Member at a meeting of Members, present in person or by proxy, attorney, or representative.

"Register of Members" means the register recording the details of each of the Members of the Company established and maintained under clause 7.

"Register of Nations" means the register recording the details of each of the Nations comprising the Murray Lower Darling Rivers Indigenous Nations established and maintained under clause 10.

"Replacement Member" means a Person appointed to replace a Representative Member in accordance with clause 5.

"Representative Member" means a Person appointed in accordance with clause 4.5.

"Representative Member Application" has the meaning given to it in clause 4.5(a).

"Representative Member Nominee" means, in respect of a Representative Member who is not a natural person, the natural person nominated by the Representative Member (or a Person who is applying to be a Representative Member) who is authorised to exercise all the rights of that Representative Member under this Constitution.

"Secretary" means a natural person appointed to perform the duties of secretary of the Company from time to time pursuant to clause 23.1.

"Special Resolution" means a resolution passed by a majority of not less than 75%.

"Subscription" means the annual subscription fee payable by Members pursuant to clause 4.9.

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

"Traditional Owner" means members of each Nation.

"Traditional Region" means the lands and waters forming part of the catchment of the Murray or Lower Darling Rivers (southern) Murray Darling Basin, an indicative map of which is set out in Schedule 1. This may change from time to time as further information is provided.

"Treasurer" means a natural person appointed to perform the duties of treasurer of the Company from time to time pursuant to clause 25.

1.2 Words and expressions

In this Constitution, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Constitution;
- (e) a reference to this Constitution includes any schedules or annexures;

- (f) headings are for convenience and do not affect interpretation;
- (g) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (h) a reference to “\$”, “A\$” or “dollar” is a reference to Australian currency;
- (i) a reference to a time is a reference to Australian Eastern Standard Time or Australian Eastern Daylight Time, whichever is appropriate;
- (j) a reference to a party includes its executors, administrators, successors, substitutes (including Persons taking by novation) and permitted assigns;
- (k) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (l) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (m) a reference to any legislation or to any provision of any legislation includes:
 - (i) any modification or re-enactment of the legislation;
 - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
 - (iii) where relevant, corresponding legislation in any Australian State or Territory;
- (n) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Constitution or any part of it;
- (o) the words “including”, “for example”, “such as” or other similar expressions (in any form) are not words of limitation; and
- (p) words or expressions defined in the Corporations Act but not in this Constitution have the same meaning in this Constitution.

1.3 Replaceable rules

To the extent permitted by law, the replaceable rules contained in the Corporations Act do not apply to the Company.

2. Objects

2.1 Principal objects

- (a) The principal objects of the Company are to:
 - (i) act as trustee of, and to administer two separate funds, the Cultural Fund and the Environmental Fund in accordance with the purposes of the Cultural Fund and the Environmental Fund respectively;

- (ii) promote and otherwise pursue the purposes of the Cultural Fund and the Environmental Fund set out in the Cultural Fund Trust Deed and the Environmental Fund Trust Deed respectively, and to administer each fund in accordance with their respective purposes;
 - (iii) encourage and promote the interest of each of the Cultural Fund and the Environmental Fund and to create greater community support for the purposes of each fund; and
 - (iv) administer one or more funds into which all gifts, contributions, donations and bequests to the Company for the purposes of each of the Cultural Fund and the Environmental Fund will be credited.
- (b) Solely for the purposes of the Cultural Fund and the Environmental Fund and not otherwise, the Company has the powers set out in each of the Cultural Fund Trust Deed and the Environmental Fund Trust Deed, respectively and clause 3 of this Constitution.

2.2 Ancillary objects

- (a) For the purpose of achieving the principal objects set out in clause 2.1, the Company has and will continue to:
- (i) confederate the Murray Lower Darling Rivers Indigenous Nations within the Traditional Region, each with an inherent and unique connection to their respective traditional lands and waters, so that the Murray Lower Darling Rivers Indigenous Nations can better work together for the protection and enhancement of the natural and cultural environment of each of their peoples and their territorial lands and waters;
 - (ii) create a forum for the Murray Lower Darling Rivers Indigenous Nations to speak about their peoples' inherent environmental and cultural heritage rights, in respect of natural and cultural resources, with a focus on water, by ensuring their real participation in resources management;
 - (iii) establish mechanisms to sustain the Murray Lower Darling Rivers Indigenous Nations' interests by which the physical, spiritual, cultural, social and economic interests in the lands and waters of the Traditional Regions that will ensure the continuation of the peoples of each Murray Lower Darling Rivers Indigenous Nation and their ability to enjoy the natural and cultural resources of the Traditional Region, an ability which is conditioned upon the integrity and aliveness of the biodiversity of flower, fauna and aquatic life;
 - (iv) protect and advance Murray Lower Darling Rivers Indigenous Nations' interests in the management of and decision-making, policy development and implementation regarding waters, land, cultural and natural resources of the southern Murray–Darling Basin as a sovereign, independent self-determining body, not aligned to government, speaking for all Murray Lower Darling Indigenous Rivers Nations with one voice;
 - (v) support Murray Lower Darling Rivers Indigenous Nations' representatives to develop their capacity to protect and advance Murray Lower Darling Indigenous Rivers Nations' interests in the management

of land, waters, cultural and natural resources of the southern Murray–Darling Basin;

- (vi) progress the business of the Company in a way consistent with the relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples;
 - (vii) speak with a strategic, unified voice about cultural and natural resource matters, at the same time ensuring that at the local level, cultural and natural resource matters will be managed by the Murray Lower Darling Rivers Indigenous Nation or Nations that speak for the country concerned;
 - (viii) provide advice and make recommendations to the Murray-Darling Basin Authority and other government agencies and institutions about Indigenous water knowledge, needs, uses, values and cultural flows of water;
 - (ix) encourage and support Elders and young people to be involved in natural and cultural resource management and Murray Lower Darling Rivers Indigenous Nation processes, through such mechanisms as forums for Elders, youth and women/men business;
 - (x) raise funds to further the objects of the Environmental Fund and the Cultural Fund;
 - (xi) do all other things and exercise all the powers set out in the Cultural Fund Trust Deed and the Environmental Fund Trust Deed and this Constitution that are necessary to reach the objects of the Company, the Cultural Fund and the Environmental Fund;
 - (xii) establish and maintain relationships and close communications with corporations, entities, associations, foundations, institutions, organisations and groups including Federal, State and Local Government instrumentalities, authorities and professionals that may have related interests to the Company and utilise their resources and facilities to provide and achieve the objects of the Company;
 - (xiii) seek and co-ordinate funding from Federal, State and Local Government and the private sector in the form of grants, gifts, donations and bequests committed to the objects of the Company;
 - (xiv) encourage and promote and generally create greater community awareness in the knowledge and understanding of the objects of the Company;
 - (xv) Develop working relations with the Northern Murray-Darling Basin Aboriginal Nations to progress and speak with a unified voice on matters of common interest; and
 - (xvi) do all such other things as are incidental or conducive to the attainment of the objects and aims of the Company and its Members.
- (b) The objects of the Company will be pursued principally in Australia.

2.3 Not for profit

- (a) The objects of the Company will not be carried on for the purpose of profit or gain to its Members and the income and property of the Company, from whatever sources derived, will be applied solely towards the promotion of the objects of the Company. No income or property of the Company will be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to the Members of the Company.
- (b) Notwithstanding anything contained in clause 2.3(a), nothing contained in that clause will prevent the payment, in good faith, of remuneration to any officers or servants of the Company or to any Member in return for any services actually rendered to the Company or for goods supplied in the ordinary or usual way of business, or prevent the payment of interest at a rate not exceeding the rate fixed for the purposes of this clause 2.3(b) by the Board on money borrowed from any Member or reasonable and proper rent for premises demised or let by any Member to the Company.

3. Powers of the Company

- (a) The Company has, subject to the Corporations Act, power to do all things necessary or convenient to be done for, or in connection with, the performance of its objects.
- (b) Without limiting the generality of clause 3(a), the Company has all the rights, powers and privileges and the legal capacity of a natural person including, but not limited to, the powers to:
 - (i) accept gifts, devises, bequests or assignments made to the Company, whether on trust or otherwise, and whether unconditionally or subject to a condition and, if a gift, devise, bequest or assignment is accepted by the Company for the Company on trust or subject to a condition, to act as trustee or to comply with the condition, as the case may be;
 - (ii) take any steps by personal or written appeals, public meetings or otherwise that the Board considers expedient to procure contributions to either or both of the Cultural Fund and the Environmental Fund by way of donations, gifts (will or otherwise), grants, sponsorships or otherwise;
 - (iii) provide funds or other material benefits by way of grant or otherwise to further the Company's objects;
 - (iv) make available (whether in writing or in any other form and whether by sale or otherwise) information relating to the Company and its functions;
 - (v) occupy, use and control any land or building owned or held under lease by any other Person made available to the Company;
 - (vi) acquire, hold and dispose of real and personal property;
 - (vii) lease the whole or any part of any land or building for the purpose of the Company;

- (viii) occupy, use and control any other land or building owned or held under lease by any other Person and made available to the Company;
 - (ix) enter into contracts;
 - (x) erect buildings;
 - (xi) employ managers and other staff to implement the objects of the Company and pay such fees, salaries, emoluments and expenses as the Board considers reasonable to such individuals;
 - (xii) purchase or take on hire, or to accept as a gift or on deposit or loan, and to dispose of or otherwise deal with furnishings, equipment and other goods;
 - (xiii) act as trustee of moneys or other property vested in the Company on trust;
 - (xiv) enter into any arrangement with any government or authority that seems conducive to the Company's objects, obtain from any government or authority any right, privilege or concession that the Company considers desirable and carry out, exercise and comply with any of those arrangements, rights, privileges and concessions;
 - (xv) appoint a Person as the Company's attorney or agent with such powers and on the terms the Company considers fit; and
 - (xvi) do anything incidental to any of the Company's objects.
- (c) Notwithstanding anything contained in this Constitution, any money or other property held by the Company for the Company on trust or accepted by the Company for the Company subject to a condition, will not be dealt with except in accordance with the obligations of the Company as trustee or as the Person who has accepted the money or other property subject to the condition, as the case may be.

4. Membership and eligibility

4.1 Number and classes of Membership

- (a) The Board may, from time to time, prescribe a maximum number of Members. The maximum number of Members must not be less than double the number of Nations.
- (b) The Members will comprise:
 - (i) each Representative Member; and
 - (ii) each Extraordinary Member.
- (c) Unless otherwise agreed to by the Board, each Nation shall be entitled to nominate as its representative(s) a maximum of two Persons that must be appointed as Representative Members in accordance with clause 4.5.

- (d) If a Nation has more than one appointed Representative Member then the Nation must also notify the Secretary in writing which of its Representative Members is entitled to exercise the one vote in aggregate that may be exercised by those Representative Members at a general meeting and this must be recorded in the Register of Members. For the avoidance of doubt, Representative Members not entitled to exercise such vote have the same rights and obligations as all other Representative Members other than the right to vote at a general meeting.
- (e) Subject to clause 4.1(c), the number of Representative Members must be at least equal to the number of Nations, with at least one Representative Member representing each Nation, but must not be more than the maximum number (if any) which the Board may fix from time to time.
- (f) The Board may, from time to time (but subject to clauses 6.2 and 6.3), establish different classes of Membership and may prescribe the qualifications, rights and privileges of Persons admitted to Membership in, or transferred into, such classes of Membership ("**Extraordinary Members**") provided that no Extraordinary Member will have the right to vote at general meetings of Members.
- (g) As at the date of adoption of this Constitution, being [date], there are no Extraordinary Members.

4.2 Term of Membership of a Representative Member

- (a) Subject to clause 4.3(b), each Representative Member will serve a fixed 3 year term which will commence:
 - (i) in respect of a Person who is a Representative Member as at the date of adoption of this Constitution: at the date of adoption of this Constitution; and
 - (ii) in respect of a Person appointed as a Representative Member in accordance with clause 4.5, after the date of adoption of this Constitution: the date on which that Person is admitted as a Representative Member in accordance with clause 4.5(j),

and is eligible to be renominated by the Nation which it is representing as a Representative Member within 28 days of the expiration of that term.
- (b) If a Representative Member is renominated within 28 days of the expiration of its term, the Representative Member must, if the Representative Member accepts the renomination, re-apply for admission to the Register of Members in accordance with clause 4.5.
- (c) A Representative Member's name must be removed from the Register of Members if the Representative Member:
 - (i) is not renominated by the Nation which it is representing within 28 days of the expiration of its term;
 - (ii) is removed by the Nation which it is representing in accordance with clause 4.7; or

- (iii) otherwise ceases to be a Member in accordance with clause 9.

4.3 Admission as a Representative Member

- (a) Subject to clause 4.3(b), every Person who, at the date of adoption of this Constitution, is a Representative Member and has paid its Subscription (if any) for the current Membership Year, continues to be a Representative Member. For the avoidance of doubt, each such Representative Member will only need to apply to be a Representative Member upon expiry of its term of Membership and subject to that Representative Member being renominated under clause 4.2(b).
- (b) Each Representative Member (or a Representative Member Nominee) must at all times meet the Member Eligibility Criteria in order to be a Representative Member.

4.4 Member Application Policy

- (a) As soon as practicable following the date of adoption of this Constitution, the Board must develop a Member Application Policy which must contain, at a minimum:
 - (i) the process by which an Applicant or an Extraordinary Member Applicant may apply for admission as a Member; and
 - (ii) the Member Eligibility Criteria (if any) that the Applicant or Extraordinary Member Applicant is required to satisfy to be eligible to be admitted as a Member (and which, for the avoidance of doubt, may include criteria that must be met by a Representative Member Nominee of Applicants that are not natural persons, or an Extraordinary Member Nominee of Extraordinary Member Applicants that are not natural persons).
- (b) The Member Application Policy (and any amendments to the Member Application Policy) must be approved by a Majority of Members at a general meeting before becoming effective.

4.5 Application for approval as a Representative Member

- (a) Each Person ("**Applicant**") nominated by a Nation to be admitted as a Representative Member of that Nation (which includes for approval as a Replacement Member) must, if that Person accepts that nomination, apply to be a Representative Member (or a Replacement Member) in accordance with the Member Application Policy ("**Representative Member Application**").
- (b) Each Applicant that is not a natural person must nominate a Representative Member Nominee. Details of the Applicant's Representative Member Nominee must be included in the Representative Member Application.
- (c) The Secretary must, as soon as practicable after receipt of an application referred to in clause 4.5(a), refer the Representative Member Application to the Board to make a determination under clauses 4.5(d), 4.5(e) or 4.5(f) (as applicable).
- (d) On a Representative Member Application being referred to the Board under clause 4.5(c), the Board will determine, giving consideration to the matters

contained in the Representative Member Application, whether the Applicant has met the requirements of the Member Application Policy (which includes the Member Eligibility Criteria applicable for Representative Members). If the Board determines (acting reasonably) that the Representative Member Application meets the Member Application Policy, it must, subject to clause 4.5(f), refer the Representative Member Application to the Members for approval at a general meeting.

- (e) The Board may, by providing reasons, reject a Representative Member Application where the Board determines (acting reasonably) that the Applicant does not comply with the Member Application Policy (which includes the Member Eligibility Criteria for Representative Members).
- (f) The Board may by a Majority approve a Representative Member Application by a Majority without referring the Representative Member Application to the Members for approval in the following circumstances:
 - (i) where the Representative Member Application relates to the appointment of a Replacement Member under clause 5; or
 - (ii) where the Representative Member Application relates to the renomination of a Member under clause 4.2(b),

but only in circumstances where the position subject of the relevant Representative Member Application has been vacant for less than a period of 12 months.

- (g) A Nation is responsible for determining who to nominate as an Applicant under clause 4.5(a).
- (h) If a Representative Member Application under clause 4.5(a) is approved by a Majority of Members at a general meeting (or by the Board where clause 4.5(f) applies), the Secretary must, as soon as practicable:
 - (i) if the Applicant is a natural person, notify the Applicant in writing that he or she has been approved as a Representative Member; and
 - (ii) if the Applicant is not a natural person, notify the Applicant and its Representative Member Nominee in writing that the Applicant has been approved as a Representative Member and that the Representative Member Nominee has been approved as its authorised representative.
- (i) The Secretary must enter the Applicant's name (and, if the Applicant is not a natural person, the name of its Representative Member Nominee) in the Register of Members, within 28 days after all of the following occurs in respect of the Applicant:
 - (i) approval by the Members under clause 4.5(h) (or by the Board where clause 4.5(f) applies) of the Representative Member Application;
 - (ii) the Company has received the amounts referred to in clause 4.9 (if applicable); and
 - (iii) the Company has received the undertaking referred to in clause 4.11.

- (j) An Applicant approved as a Representative Member becomes a Member and is entitled to exercise the rights of a Representative Member (and including through the Representative Member Nominee, as applicable) when the Applicant's name is entered into the Register of Members.
- (k) If a Representative Member Application has been rejected by the Board under clause 4.5(e) or has not been approved by the Members under clause 4.5(h), the Secretary must, as soon as practicable:
 - (i) notify the Applicant in writing that the Representative Member Application has been rejected or not approved; and
 - (ii) return to the Applicant the first year's Subscription (if any) which accompanied the Representative Member Application.

4.6 Insufficient Representative Members

- (a) If a vacancy in the Membership arises resulting in a situation where a Nation does not have at least one Representative Member, then the Nation without a Representative Member must nominate a Person who must, if that Person accepts the nomination, apply in accordance with clause 4.5(a) for admission as a Representative Member.
- (b) Where a Nation does not have at least one Representative Member for a period in excess of 12 months, clause 11.5(a) will apply in respect of that Nation.

4.7 Removal of Representative Member by a Nation

- (a) A Nation may seek to remove and replace a Representative Member of that Nation by giving written notice to the Board of that Nation's intention to remove the Representative Member ("**Removal Notice**").
- (b) The Removal Notice may contain submissions as to why the Nation seeks to remove and replace the Representative Member of that Nation.
- (c) Following receipt of a Removal Notice under clause 4.7(a) the Board, having regard to the matters contained in the Member Application Policy and any other matter it reasonably considers appropriate, will determine whether or not the Representative Member should be removed from the Register of Members.
- (d) If the Board unanimously resolves that a Representative Member should be removed, the Representative Member's name must be removed from the Register of Members with immediate effect.
- (e) For the avoidance of doubt, clause 4.6 will apply to a Nation where the removal of its Representative Member results in a situation where that Nation did not have at least one appointed Representative Member.
- (f) A replacement of a Representative Member must comply with the requirements of clause 5.1 and 5.2.

4.8 Nomination of Extraordinary Members

- (a) A Director shall be entitled to nominate Persons to be admitted as Extraordinary Members.
- (b) Each Person ("**Extraordinary Member Applicant**") who is nominated by a Director to be admitted as an Extraordinary Member must, if that Person accepts such nomination, apply to be an Extraordinary Member in accordance with the Member Application Policy ("**Extraordinary Member Application**").
- (c) An Extraordinary Member Applicant who is not a natural person must nominate an Extraordinary Member Nominee. Details of the Applicant's Extraordinary Member Nominee must be included in the Extraordinary Member Application.
- (d) The Secretary must, as soon as practicable after receipt of an Extraordinary Member Application referred to in clause 4.8(b), refer the Extraordinary Member Application to the Board to make a determination under clause 4.8(e).
- (e) On an Extraordinary Member Application being referred to the Board under clause 4.8(d), the Board will determine, giving consideration to the matters contained in the Extraordinary Member Application, whether the Extraordinary Member Applicant has met the requirements of the Member Application Policy (which includes the Member Eligibility Criteria applicable for Extraordinary Members). If the Board determines (acting reasonably) that the Extraordinary Member Application meets the Member Application Policy (including the Member Eligibility Criteria applicable for Extraordinary Members), it must refer the Extraordinary Member Application to the Members for approval at a general meeting.
- (f) The Board may, by providing reasons, reject an Extraordinary Member Application where the Extraordinary Member Applicant does not comply with the Member Application Policy (which includes the Member Eligibility Criteria for Extraordinary Members).
- (g) If an Extraordinary Member Application referred to the Members under clause 4.8(e) is approved by a Majority of Members at a general meeting, the Secretary must, as soon as practicable:
 - (i) if the Extraordinary Member Applicant is a natural person, notify the Extraordinary Member Applicant in writing that he or she has been approved by the Board as an Extraordinary Member; and
 - (ii) if the Extraordinary Member Applicant is not a natural person, notify the Extraordinary Member Applicant and its Extraordinary Member Nominee in writing that the applicant has been approved as an Extraordinary Member and that its Extraordinary Member Nominee has been approved as its authorised representative.
- (h) When giving notification under clause 4.8(g), the Secretary must also notify the Extraordinary Member Applicant and its Extraordinary Member Nominee (if any) as to the qualifications, rights and privileges that attach to the applicant's Membership provided that no Extraordinary Member will have the right to vote at a general meeting.

- (i) The Secretary must enter the Extraordinary Member Applicant's name (and, if the Applicant is not a natural person, the name of its Extraordinary Member Nominee) in the Register of Members, within 28 days after all of the following occurs in respect of the Extraordinary Member Applicant:
 - (i) approval by the Board of the Extraordinary Member Application of the Extraordinary Member Applicant;
 - (ii) the Company has received the amounts referred to in clause 4.9 (if applicable); and
 - (iii) the Company has received the undertaking referred to in clause 4.11,
- (j) Each Extraordinary Member will serve a fixed 3 year term which will commence on the date on which that Person is admitted as an Extraordinary Member in accordance with clause 4.8(i). An Extraordinary Member may be renominated by a Director under this clause 4.8 at the cessation of its term, and if it accepts the nomination, it may re-apply for admission as an Extraordinary Member in accordance with this clause 4.8.
- (k) An Extraordinary Member Applicant admitted as an Extraordinary Member, becomes a Member and is entitled to exercise the rights of an Extraordinary Member (including through its Extraordinary Member Nominee, as applicable), as prescribed by the Board from time to time, when the Extraordinary Member Applicant's name is entered into the Register of Members.
- (l) An Extraordinary Member's name must be removed from the Register of Members if:
 - (i) the Members by a Majority pass a resolution requiring the removal of the Extraordinary Member's name from the Register of Members; or
 - (ii) it otherwise ceases to be a Member in accordance with clause 9.

4.9 Subscription

- (a) Subject to the following provisions of this clause 4.9, the Board will determine the Subscription, if any, payable by Members in each Membership Year.
- (b) The Board is entitled to determine, in its absolute discretion, that the Subscription payable in any Membership Year by any Member will vary from the Subscription payable by any other Member.
- (c) If the first Membership Year applicable to the Person seeking admission to Membership is comprised of less than 365 days, the first year's Subscription payable by that Person is to be apportioned according to the number of days remaining in that Membership Year.
- (d) The Subscription is to be paid by each Member, in advance at the commencement of each Membership Year, by delivery of payment to the Secretary, or to such other Person or in such other manner as the Board determines, from time to time.

4.10 Nominee

- (a) A Nominee may be removed or replaced by written notice to the Secretary, signed or executed by the Member which nominated that Nominee provided a replacement Nominee that complies with the relevant terms of the Member Eligibility Criteria is:
 - (i) notified to the Secretary; and
 - (ii) approved by a Majority of the Board.
- (b) If the Member which nominated a Nominee gives notice to the Secretary that it wishes its Nominee to be removed or replaced (for whatever reason), the Secretary will, subject to approval of the Nominee by the Board in accordance with clause 4.10(a) as soon as practicable make the appropriate entries in the Register of Members.

4.11 Undertaking

- (a) Every Member must provide a written undertaking to the Company in accordance with clause 4.11(b).
- (b) Every Member undertakes to contribute to the property of the Company if the Company is wound up while they are a Member, or within one year after they cease to be a Member, for payment of the debts and liabilities of the Company (contracted before they cease to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors among themselves such amount as may be required, not exceeding, in any event, \$20.00 per Member.

4.12 Indemnity

Each Nation indemnifies their respective Members for any amount that a Member is required to contribute to the Company on a winding up pursuant to the undertaking in clause 4.11.

4.13 GST

- (a) All payments that are required to be made by a Member under this Constitution (including but not limited to Subscriptions) are exclusive of GST.
- (b) If any payment referred to in clause 4.13 is for, or is in connection with, a supply made by the Company under this Constitution on which the Company is liable to pay GST, then such payment will be increased by the prevailing rate of that GST and the Member will pay that increased amount to the Company at the same time and in the same manner as all other payments required to be made.
- (c) The Company must issue to the Member a tax invoice for the increased amount referred to in clause 4.13 not less than 14 days prior to the date that the increased amount is required to be paid by the Member.

5. Replacement Members

5.1 Nomination of Replacement Member

If a Representative Member ceases to be a Member for any reason, the Nation which that Representative Member represents may (or must, where clause 4.6 applies to that Nation) nominate a Person who must, if that Person accepts the nomination, apply for admission as a Replacement Member in accordance with clause 5.2.

5.2 Form of Nomination

- (a) An application for the purpose of clause 5.1:
 - (i) must be made in accordance with clause 4.5(a);
 - (ii) must state that the application is for a Replacement Member with reference to the Person who is being replaced; and
 - (iii) will otherwise be treated as an application for the Replacement Member to be a Representative Member.

5.3 Term of Replacement Members

- (a) The term of a Replacement Member shall be a fixed 3 year term which commences on the date that Person is admitted as a Representative Member in accordance with clause 4.5(j).
- (b) At the cessation of the period referred in clause 5.3(a), a Replacement Member may be renominated for membership in accordance with clause 4.2(b).

5.4 Provisions to apply

Unless this Constitution specifically provides otherwise, any provisions of this Constitution that apply to a Representative Member shall apply to the Replacement Member as if he or she was a Representative Member.

6. Rights of Members

6.1 Rights and privileges

- (a) Subject to this Constitution, the Members are entitled to all the rights and privileges of Membership of the Company, subject to the qualifications, rights and privileges attaching to separate classes of Membership (if any).
- (b) A right, privilege, or obligation of a Person by reason of their Membership:
 - (i) is not capable of being transferred or transmitted to another Person; and
 - (ii) terminates on cessation of Membership whether by death or resignation or otherwise as set out in clause 9.

6.2 Variation of Rights

If at any time the Directors seek to exercise the powers under clause 4.1(f), the rights, restrictions or obligations of Members or any class of Members may be varied with either:

- (a) the written consent of not less than 75% of the existing Members; or
- (b) the sanction of a Special Resolution passed at a separate general meeting of the existing Members.

6.3 Effect of new class of Membership

- (a) The Board may only establish a new class of Membership with either:
 - (i) the written consent of not less than 75% of the existing Members; or
 - (ii) the sanction of a Special Resolution passed at a separate general meeting of the existing Members.
- (b) If the Board establishes a new class of Membership that has the same rights, restrictions or obligations as an existing class of Membership, the establishment of that new class of Membership is not treated as a variation of the rights attaching to that class.

7. Register of Members

7.1 Information in Register of Members

The Secretary must keep and maintain a Register of Members containing:

- (a) the name and address of each Member;
- (b) the date on which each Member's name was entered in the Register of Members;
- (c) in the case of a Member who is not a natural person, the name and address of its authorised Nominee;
- (d) the class of Membership for each Member; and
- (e) any other information which the Board considers necessary.

7.2 Inspection and copies

Subject to the Corporations Act:

- (a) the Register of Members will be made available for inspection, free of charge, to any Member or Nation on request; and
- (b) a Member or Nation may make a copy of entries in the Register of Members.

8. Default by Members

- (a) If a Member fails to pay any Subscription that may be payable by that Member, in whole or in part, in respect of any Membership Year for more than 60 days after the due date for payment:
 - (i) all of the rights and privileges of that Member will be automatically suspended until the Subscription, or such part which is payable and remains outstanding, is paid or until its Membership has ceased in accordance with clause 8(b); and
 - (ii) the Secretary will give written notice to that Member requiring payment of the Subscription, or such part of the Subscription which is payable and remains outstanding.
- (b) If any Member fails to pay its Subscription in accordance with clause 8(a), or any part which is payable and remains outstanding for a further 60 days after service of the notice to the Member in accordance with clause 8(a)(ii), the Member will automatically cease to be a Member pursuant to clause 9 and the Secretary must notify that Member accordingly.

9. Cessation of Membership

9.1 Ceasing to be a Member

A Person ceases to be Member of the Company if:

- (a) it ceases to be a Member under clause 8;
- (b) it is expelled under clause 9.3;
- (c) it resigns its Membership in accordance with clause 9.4; or
- (d) in respect of a Representative Member:
 - (i) if it is removed by its appointing Nation in accordance with clause 4.7; or
 - (ii) the Nation which that Representative Member represents is removed from the Register of Nations.

9.2 Continuing liability

A Member who resigns continues to be liable for any Subscription and all arrears due and unpaid at the date of its resignation and for all other amounts due by the Member to the Company and for any sum not exceeding \$20.00 for which it may become liable as a Member under clause 4.11(b).

9.3 Power to censure, fine, suspend or expel

- (a) If any Member commits a Member Offence, the Board may, subject to clause 9.3(b), by a Majority resolution of the Directors ("**First Resolution**") censure, fine, suspend or expel that Member. The First Resolution will not be effective unless and until confirmed under clause 9.3(d)(i).

- (b) Where the Board passes a First Resolution in accordance with clause 9.3(a), the Secretary must, as soon as practicable, serve on the Member, a notice in writing:
 - (i) setting out the First Resolution and the grounds on which it is based;
 - (ii) stating that the Member may address the Members at the next meeting of Members to be held after service of the notice;
 - (iii) stating the date, place and time of that meeting;
 - (iv) informing the Member that they may:
 - (A) attend the meeting; or
 - (B) give to the Board, before the date of the meeting, a written statement seeking revocation of the First Resolution.
- (c) At the next general meeting of the Members called in accordance with clause 12.3:
 - (i) the Directors may place before the meeting details of the grounds for the First Resolution and the reasons for the passing of the First Resolution;
 - (ii) the Member the subject of the First Resolution must be given an opportunity to be heard; and
 - (iii) the Members Present must vote by secret ballot on the question whether the First Resolution should be confirmed or revoked.
- (d) If at the general meeting:
 - (i) a Majority of the Members Present and voting, vote in favour of the confirmation of the First Resolution, the First Resolution will stand confirmed; and
 - (ii) in any other case, the First Resolution will be revoked.
- (e) If the First Resolution is confirmed by Members, under clause 9.3(d)(i), the First Resolution will immediately be effective and if the First Resolution expels the Member concerned, that Member will be immediately expelled and the Secretary must make the appropriate entries in the Register of Members.

9.4 Resignation of a Member

- (a) A Member who has paid all amounts due and payable by it to the Company may resign from the Company by first giving one month's notice in writing to the Secretary of its intention to resign and on the expiration of that period of notice, the Member will cease to be a Member.
- (b) On expiry of a notice under clause 9.4(a), the Secretary will:
 - (i) repay to the Member the proportion of the Subscription received by the Company referable to the unexpired term of the relevant Membership Year; and

- (ii) make an entry in the Register of Members recording the date on which the Member ceased to be a Member.
- (c) If the resignation of a Representative Member results in a situation where the Representative Member's appointing Nation has no Representative Members, then clause 4.6 will apply in respect of that Nation.

10. Register of Nations

10.1 Information in Register of Nations

The Secretary must keep and maintain a Register of Nations containing:

- (a) the name and location of each Nation;
- (b) the date on which each Nation was entered in the Register of Nations; and
- (c) the name, location and contact details of the Approved Contact.

10.2 Inspection and copies

Subject to the Corporations Act:

- (a) the Register of Nations will be made available for inspection, free of charge, to any Member or Nation on request; and
- (b) a Member or Nation may make a copy of entries in the Register of Nations.

10.3 Approved Contact

- (a) A Nation must appoint a Person or Persons who will be responsible for submitting applications for Membership and for all other official correspondence with the Company ("**Approved Contact**").
- (b) The Approved Contact of a Nation cannot be a Representative Member or a Representative Member Nominee of that Nation.
- (c) An Approved Contact may be replaced at any time by written notice to the Secretary by the Nation who appointed the Approved Contact.
- (d) If the Nation which appointed an Approved Contract gives notice that it wishes to replace its Approved Contact, the Secretary will, within 5 days of receiving such notice, update the name, location and contact details of the Approved Contact in the Register of Nations.

11. Nation eligibility

11.1 Application for admission to Register of Nations

- (a) Any group of peoples or body corporates that the Board has resolved as at the date of adoption of this Constitution is a Nation, and/or has appointed Representative Members at the date of the adoption of this Constitution, will continue to be a Nation.

- (b) Subject to clause 11.1(a), a group of peoples or body corporate seeking admission to the Register of Nations ("**Nation Applicant**") must submit an application ("**Nation Application**") in accordance with clause 11.3.

11.2 Nation Application Policy

- (a) As soon as practicable following the date of adoption of this Constitution, the Board must develop a Nation Application Policy which must contain, at a minimum:
 - (i) the process by which a Nation Applicant may apply for admission as a Nation; and
 - (ii) the Nation Eligibility Criteria (if any) that the Board will consider in determining whether to refer a Nation Applicant to the Members for approval as a Nation.
- (b) The Nation Application Policy (and any amendments to the Nation Application Policy) must be approved by a Majority vote at a general meeting of Members before becoming effective.

11.3 Application for approval as a Nation

- (a) Each Nation Application must be made in accordance with the Nation Application Policy.
- (b) Subject to clause 11.3(c), following receipt of a Nation Application, the Board will refer the Nation Application to the next scheduled general meeting of Members to consider a resolution to admit the Nation Applicant to the Register of Nations.
- (c) Where the Nation Applicant does not satisfy the requirements of the Nation Eligibility Criteria, the Board may, in its absolute discretion, determine not to refer the Nation Application to a general meeting of Members but will work with the Nation Applicant to address any deficiencies in the Nation Application to enable the Nation Applicant to re-apply for approval as a Nation.
- (d) If a Nation Application is approved by a Majority at a general meeting of Members, the Secretary must, within 28 days, enter the Nation Applicant onto the Register of Nations.
- (e) Subject to clause 4.1(c), within 14 days of being admitted to the Register of Nations, a Nation must nominate at least one and not more than two Persons to apply in accordance with clause 4.5 to represent the Nation as its Representative Member(s).

11.4 Voluntary removal from the Register of Nations

- (a) A Nation may be voluntarily removed from the Register of Nations by giving one month's notice in writing to the Secretary of its intention to be removed from the Register of Nations.
- (b) One month after having received a notice under clause 11.4(a), the Secretary will remove the Nation from the Register of Nations.

11.5 Removal by Board

- (a) If at any time a Nation ("**Defaulting Nation**"):
 - (i) has no appointed Representative Members for a period exceeding 12 months; or
 - (ii) in the Board's absolute discretion, has not met the minimum standards required for participation in the Company,

the Board may decide (in its discretion) to issue the Nation a written notice that a Special Resolution to remove the Nation from the Register of Nations will be considered at the next general meeting of Members held not less than two months after receipt of the notice.
- (b) A Defaulting Nation will be afforded the opportunity to make submissions to the Members at the general meeting convened in accordance with clause 11.5(a).
- (c) At the general meeting convened in accordance with clause 11.5(a), if the Members pass a Special Resolution to remove a Defaulting Nation from the Register of Nations, the Defaulting Nation will be removed from the Register of Nations.

12. General meetings

12.1 Annual General Meeting

- (a) If the Company is required by the Corporations Act to hold an annual general meeting, it will be held within five months after the end of the Company's financial year in accordance with this Constitution and the Corporations Act.
- (b) To the extent applicable to the Company, the business of the annual general meeting may include:
 - (i) any business required by the Corporations Act;
 - (ii) the election of the Directors;
 - (iii) the consideration of the financial reports of the Company, the Directors' report and the auditor's report; and
 - (iv) such other business as may be properly transacted at the annual general meeting.

12.2 General meetings

All general meetings other than the annual general meeting will be called general meetings.

12.3 Calling

The Board may call a general meeting at any time. The ability of Members to:

- (a) request that the Board call a general meeting; and

(b) call and arrange to hold a general meeting themselves,
is limited to the powers set out in the Corporations Act.

12.4 Notice

Subject to the provisions of the Corporations Act allowing general meetings to be held on shorter notice, at least 21 days' written notice of a general meeting must be given to:

- (a) each Member;
- (b) each Director;
- (c) the auditor of the Company (if any); and
- (d) any other Person required by law.

No other Person is entitled to receive notice of a general meeting.

12.5 Content of notice

A notice of a general meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the business of the meeting;
- (c) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and the content of the Special Resolution itself; and
- (d) contain a statement specifying that:
 - (i) the Member (to the extent it has a right to vote at the meeting) has a right to appoint one proxy; and
 - (ii) the proxy must be a Member from the same Nation.

12.6 Failure to give notice

The accidental omission to send notice of a general meeting to, or the non-receipt of a notice of a general meeting properly given to any Person entitled to notice does not invalidate the proceedings or any resolution passed at the meeting.

12.7 Postponement or cancellation or change of general meeting

Subject to the Corporations Act, the Board may at any time prior to the time at which a general meeting is to be held, postpone or cancel any general meeting or change the place of any general meeting. Any such postponement, cancellation or change must be communicated to each Member of the Company and each other Person to whom notice was given, in any manner permitted under clause 29.

13. Proceedings at general meetings

13.1 Quorum

No business may be transacted at an annual general meeting or any other general meeting unless a quorum is Present at the time when the meeting proceeds to business. A quorum consists of half plus one of the Members entitled to vote. A quorum must be Present for the entire meeting.

13.2 Determining quorum

Each individual Present at a general meeting may only be counted once toward a quorum.

13.3 Quorum not Present

If a quorum is not Present within 3 hours after the time appointed for a general meeting:

- (a) if the meeting was convened at the request Members, it is automatically dissolved; and
- (b) in any other case the meeting may continue and relations (including any resolutions considered) will be carried over until the next meeting where they will be put for ratification.

13.4 Chairing meetings

The Chairperson (or, in the Chairperson's absence, the Deputy Chairperson) will chair every meeting of the Members. If:

- (a) there is no Chairperson or Deputy Chairperson;
- (b) neither the Chairperson nor the Deputy Chairperson is present within 15 minutes after the time appointed for holding the meeting; or
- (c) both the Chairperson and the Deputy Chairperson are unwilling to act as chair of the meeting,

the Members Present and entitled to vote will elect a Member or Director to chair the meeting.

13.5 Function of chairperson

The Chairperson of a general meeting is responsible for the general conduct and procedures to be adopted at the meeting.

13.6 Adjournment by chairperson

The Chairperson of a general meeting at which a quorum is Present:

- (a) may, with the consent of the meeting; and
- (b) must, if directed by resolution of the meeting,

adjourn the meeting to another time and place.

13.7 Adjourned meeting

The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting. Notice of the adjourned meeting must be given if the meeting is adjourned for one month or more.

13.8 Show of hands

Unless a poll is demanded under clause 13.9:

- (a) a resolution put to a vote at a general meeting must be decided on a show of hands; and
- (b) a declaration by the Chairperson that a resolution has been carried, carried by a particular majority or lost and an entry to that effect in the minutes of the meeting will be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour or against the resolution.

13.9 Demanding a poll

Either before or on declaration of the result of a show of hands, a poll may be demanded by:

- (a) the Chairperson; or
- (b) at least three Members entitled to vote on the resolution.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

13.10 When and how polls must be taken

A poll will be taken when and in the manner the Chairperson directs, except for:

- (a) a poll demanded on the election of a Chairperson; or
- (b) a poll demanded on the adjournment of a meeting,

which must be taken immediately. The result of the poll will be the resolution of the meeting at which the poll was demanded.

13.11 Equal number of votes

If an equal number of votes is cast for and against a resolution, the Chairperson has a casting vote in addition to the Chairperson's vote as a Member, proxy, attorney or representative.

13.12 Class meetings

The provisions of this Constitution relating to general meetings apply, with any necessary modifications, to separate meetings of a class of Members except that the necessary quorum will be two Members of the relevant class entitled to vote at the meeting, unless there is only one such Member, in which case the quorum is one.

14. Voting at general meetings

14.1 Number of votes

Subject to this Constitution and any rights or restrictions imposed on or attached to a class of Membership, the Representative Member (or Representative Members) nominated by each Nation who is (or are) Present at a general meeting is (or are) entitled to one vote in aggregate.

14.2 Votes by Members

If a Nation has appointed more than one Representative Member only, the Representative Member nominated by the Nation as being entitled to exercise the vote may exercise the vote.

14.3 Unpaid Subscription

A Representative Member is not entitled to vote at a general meeting if any Subscription owing by that Representative Member is more than one month in arrears at the date of the meeting.

14.4 Objections

An objection to the qualification of any voter:

- (a) may only be raised at the meeting or adjourned meeting at which the voter exercised its vote; and
- (b) must be determined by the Chairperson, whose decision, if made in good faith, will be final and conclusive.

A vote that the Chairperson does not disallow pursuant to an objection is valid for all purposes.

15. Proxies, attorneys and representatives

15.1 Proxies

A Member entitled to attend and vote at a general meeting may appoint a proxy to attend and vote for the Member at the meeting.

15.2 Number of proxies

- (a) A Member entitled to vote at a general meeting may appoint one proxy.
- (b) The proxy must be the Chairperson or a Representative Member from the same Nation.

15.3 Rights of proxies

Subject to this Constitution and the proxy's terms of appointment, a proxy has the same rights as the appointing Member to speak at a general meeting, to vote and to join in and demand a poll.

15.4 Voting rights of proxies

A proxy may vote either on a show of hands or a poll. If a proxy's appointment specifies the way in which the proxy must vote, the proxy must follow those instructions in accordance with the Corporations Act.

15.5 Attorneys

A Member may appoint an attorney to act for the Member at general meetings or to appoint a proxy to act for the Member at general meetings.

15.6 Rights of attorneys

Unless restricted by the terms of appointment or the Corporations Act, an attorney may exercise the same powers on the Member's behalf that the Member could exercise at a general meeting or in voting on a resolution.

15.7 Standing appointments

A Member may appoint a proxy or attorney to act at a particular general meeting or make a standing appointment. A Member may revoke any appointment.

15.8 Instrument of appointment of proxies

Subject to clause 15.10, the instrument of appointment of a proxy must be in a written form approved by the Board and must be signed or executed:

- (a) if the appointing Member is a natural person, by the appointing Member or that Member's attorney; and
- (b) if the appointing Member is a body corporate, by the body corporate in accordance with the Corporations Act or by the body corporate's duly authorised attorney or Nominee.

15.9 Instrument of appointment of attorneys and representatives

Subject to clause 15.10, the instrument of appointment of an attorney must be in a written form and must:

- (a) if a Member who is a natural person appoints an attorney, consist of a valid power of attorney signed by the appointing Member in the presence of at least one witness; and
- (b) if a Member who is a body corporate appoints an attorney, consist of a valid power of attorney executed by the appointing Member in accordance with the Corporations Act.

15.10 Alternative method of appointment

Notwithstanding clauses 15.8 and 15.9, the instrument of appointment of a proxy or attorney will be valid if it is in a form and is authenticated in any manner prescribed by the Corporations Act.

15.11 Company must receive appointments

The appointment of a proxy or attorney is only effective in relation to a general meeting if the Company receives the instrument effecting the appointment and any additional documents required by clause 15.13 in the case of a proxy or attorney, at least 48 hours before the time for holding the meeting or adjourned meeting (unless the notice of meeting specifies a shorter time period).

15.12 Definition of receipt

The Company receives the documents referred to in clause 15.11 when they are received:

- (a) at the Office;
- (b) at a place, fax number or electronic address specified in the notice of meeting; or
- (c) if the notice of meeting specifies other electronic means by which a Member may give the documents, by those means in accordance with the Corporations Act.

15.13 Additional documents

If an appointment purports to be executed under a power of attorney or other authority, the original power or authority or a certified copy of it must be received by the Company along with the appointment.

15.14 Chairperson may declare appointment invalid

If:

- (a) the instrument of appointment of a proxy or attorney does not comply with the terms of this Constitution; or
- (b) the appointment and any additional documents are not received by the Company in accordance with the terms of this Constitution,

the appointment will be treated as invalid unless the Chairperson declares otherwise.

15.15 Adjourned meetings

An appointment of a proxy, attorney or representative for a particular general meeting is valid at the adjourned meeting.

15.16 Rights of proxies and attorneys if Member present

A proxy or attorney has no power to act for a Member at a general meeting at which the Member is present in person or if a Member is a body corporate, that Member's Nominee is present. A proxy has no power to act for a Member at a general meeting at which the Member is present by attorney.

15.17 Priority of conflicting appointments

The following rules govern conflicting appointments:

- (a) an appointment of a proxy is revoked (or suspended for the particular general meeting if a standing appointment) if the Company receives a further proxy appointment that would result in the Member having more proxies than the Member is entitled to under clause 15.2;
- (b) the proxy appointment made first in time under clause 15.17(a) is the first to be treated as revoked or suspended under that clause; and
- (c) if more than one attorney appointed by a Member is present at a general meeting and the Company has not received notice of revocation of any of the appointments:
 - (i) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney appointed under a standing appointment; and
 - (ii) subject to clause 15.17(c)(i), the more recently appointed attorney may act to the exclusion of an attorney appointed earlier in time.

15.18 Continuing authority

A vote cast by a proxy or attorney at a general meeting will be valid even if, before the vote, the appointing Member (or its Nominee as applicable):

- (a) dies or becomes mentally incapacitated; or
- (b) revokes the appointment or the authority under which the appointment was made by a third party,

unless the Company has received written notification of the matter before the start or resumption of the meeting.

15.19 Nominees

Members who are body corporates can only vote at a general meeting by its Nominee who shall be that body corporate's representative for the purposes of section 250D of the Corporations Act.

16. Directors and Executive

16.1 Minimum number and requirements

- (a) The Board of the Company will consist of a minimum of eight Directors, and a maximum of eleven Directors. Each Director will be elected by the Members in accordance with clause 17 at an annual general meeting of the Company.
- (b) Each Nation shall have no more than one of its Representative Members elected as a Director of the Company.
- (c) The Board may also appoint an Executive Officer on such terms and conditions as it thinks fit. The Executive Officer will have a standing invitation to all meetings of the Board, but for the avoidance of doubt, is not a Director.
- (d) The Executive of the Board will consist of:

- (i) a Chairperson and Deputy Chairperson who shall be elected by the Members; and
 - (ii) an Executive Officer, Secretary, Treasurer and such other persons appointed by the Board from time to time.
- (e) The Executive may meet at any time it sees fit in its discretion.

16.2 Membership requirement

- (a) Natural persons who have served as a Representative Member for a period of at least 12 months are eligible to be nominated as a Director.
- (b) The following may not be Directors:
 - (i) Representative Member Nominees; or
 - (ii) Extraordinary Members (or Extraordinary Member Nominees).
- (c) All members of the Executive, except for the Secretary and the Executive Officer must be Directors.
- (d) A Director may simultaneously hold any other office or position in the Company on terms determined by the Board.

16.3 Meetings of Members

A Director is entitled to notice of, and to attend all general meetings and class meetings of Members.

16.4 Appointment and removal by Members

Subject to clause 16.1 and the Corporations Act, the Company may by resolution passed in general meeting:

- (a) appoint a natural person to be a Director;
- (b) remove a Director from office;
- (c) appoint another natural person in a Director's place; and
- (d) subject to clause 16.7, determine any rotation and retirement policies for Directors.

16.5 Term of office

- (a) Subject to clauses 16.6 and 16.7, a Director holds office for a period of two years and is eligible for re-appointment by Members at the cessation of that term.
- (b) The term of office of a Director who is in office as at the date of adoption of this Constitution being [date] will re-commence on the date of adoption of this Constitution.

16.6 Cessation of appointment

A Director will automatically cease to hold office if he or she:

- (a) is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a Director;
- (b) becomes bankrupt or enters into or becomes subject to any arrangement or composition with creditors;
- (c) becomes mentally incapable or whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (d) resigns by notice in writing to the Company;
- (e) ceases to be a Representative Member or to hold a necessary qualification or positions for eligibility as a Director under clause 16.2;
- (f) is removed from office under clause 16.4; or
- (g) the term for which he or she was appointed or elected expires.

16.7 Rotation of Directors

- (a) To implement a rotational system of Director appointments, at the first annual general meeting of the Company held after the adoption of this Constitution, one half of the appointed Directors will be required to retire and will be eligible for re-election in accordance with clause 17 for the term outlined in clause 16.5.
- (b) The Directors will determine amongst themselves who will be required to retire in accordance with this clause 16.7, however, failing agreement, the Directors who are required to retire will be determined by drawing lots.
- (c) Where the number of Directors required to retire pursuant to clause 16.7(a) is not a whole number, the number will be rounded down.

17. Election of Directors

The election of Directors will take place in the following manner:

- (a) any natural person who is eligible under clause 16.2 and wishes to serve as a Director ("**Candidate**") must be nominated by an existing Member;
- (b) a nomination under clause 17(a) must be in writing, signed by the Candidate and his or her nominator, and lodged with the Secretary at least 14 days before the annual general meeting at which the election is to take place;
- (c) a list of the names of the Candidates who have submitted a written nomination in accordance with clause 17(b), in alphabetical order with their relevant nominator's name, must be posted in a conspicuous place at the Office for a period of not less than 7 days immediately preceding the annual general meeting at which the election is to take place;

- (d) at the request of the Chairperson, Members may verbally nominate Candidates to stand for election at the annual general meeting, so long as that Candidate is present at the meeting;
- (e) if the number of Candidates standing for election as Directors exceeds the number of vacancies to be filled on the Board the following provisions will apply:
 - (i) balloting lists will be prepared containing the names of the Candidates in alphabetical order;
 - (ii) each Representative Member Present (excluding the Candidates) at the annual general meeting that is entitled to vote at the meeting will be entitled to vote for any number of Candidates not exceeding the number of vacancies to be filled; and
 - (iii) the Candidates elected as Directors will be the Candidates receiving the greatest number of votes in descending order by reference to the number of vacancies to be filled on the Board;
- (f) if there is not a sufficient number of Candidates for each vacancy to be filled on the Board, the Directors may resolve by a Majority to fill the remaining vacancy or vacancies with such natural persons (who are eligible under clause 16.2) as they think fit.

18. Remuneration of Directors

18.1 Remuneration

The Directors (excluding those who are salaried employees) will be honorary.

18.2 Expenses

The Company will pay Directors all reasonable travelling and other expenses properly incurred:

- (a) in attending Board meetings or any meetings of committees of Directors;
- (b) in attending any general meetings of the Company; and
- (c) in connection with the Company's business.

18.3 Board approval

All payments to Directors under clause 18.2 must be approved by the Board.

19. Powers and duties of Directors

19.1 Management of the Company

The business of the Company will be managed by the Board through meetings of the Executive. The Board may exercise all the powers of the Company except any powers that are required by this Constitution or the Corporations Act to be exercised by the Company at the general meeting.

19.2 Specific powers

- (a) Without limiting the generality of clause 19.1, the Board may exercise all the powers of the Company to:
- (i) borrow money;
 - (ii) charge any of the Company's property or business;
 - (iii) give any security for a debt, liability or obligation of the Company or any other Person;
 - (iv) guarantee or become liable for the payment of money or the performance of any obligation by or of any other Person; and
 - (v) pay out of the Company's funds all expenses of the promotion, formation and registration of the Company and the vesting in it of the assets acquired by the Company,
- on any terms determined by the Board.
- (b) The Board may exercise all the powers conferred on the Company in its capacity as trustee under the Cultural Fund Trust Deed and the Environmental Fund Trust Deed.

19.3 Duties under the Corporations Act

A Director must comply with the Corporations Act and fulfil any duties prescribed in it.

19.4 No disqualification

A Director is not disqualified by reason only of being a Director from:

- (a) holding any office, place of profit or position of employment with the Company;
- (b) acting in a professional capacity for the Company;
- (c) being a member or creditor of any corporation (including the Company) or partnership; or
- (d) entering into any agreement or arrangement with the Company.

19.5 Disclosure of interests

If required by the Corporations Act, a Director must disclose to the Board any material personal interest the Director has in a matter relating to the affairs of the Company. The Secretary must record details of any such disclosures in the minutes of the Executive.

19.6 Voting if Director has an interest

If a Director discloses a material personal interest in a matter being considered by the Executive or the interest is not one requiring disclosure under the Corporations Act:

- (a) the Director may vote on matters that relate to the interest and may be counted towards a quorum;

- (b) any transactions that relate to the interest may proceed and the Director may participate in the execution of any relevant document; and
- (c) if disclosure is made before the transaction is entered into:
 - (i) the Director may retain benefits under the transaction; and
 - (ii) the Company cannot avoid the transaction merely because of the existence of the interest.

19.7 Obligation of secrecy

Every Director and other agent or officer of the Company must:

- (a) keep the transactions and affairs of the Company confidential, except:
 - (i) to the extent necessary to enable him or her to perform his or her duties to the Company;
 - (ii) as required by the Board or the Company in a general meeting; and
 - (iii) as required by law; and
- (b) if requested by the Board, sign a confidentiality undertaking consistent with this clause 19.7.

20. Delegation of Directors' powers

20.1 Power to delegate

The Board may delegate any of its powers (except the power of delegation) to:

- (a) the Executive;
- (b) a committee of Directors;
- (c) a Director;
- (d) an employee or adviser of the Company; or
- (e) an attorney.

20.2 Terms of delegation

A delegation of powers by the Board under clause 20.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including the power to delegate further) and subject to any restrictions that the Board determines.

A document of delegation may contain provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

20.3 Delegate to comply with directions

A delegate under clause 20.1 must exercise its powers subject to any direction from the Board.

20.4 Board may revoke delegation

The Board may revoke a delegation of its powers at any time.

20.5 Advisory board

- (a) The Board may establish one or more advisory boards comprising such natural persons as the Board thinks fit. A member of an advisory board may, but need not be, a Director or Member.
- (b) An advisory board will act in an advisory capacity only and in the exercise of the powers delegated in accordance with this clause 20, conform to any direction from the Board.

20.6 Proceedings of committees and advisory board

Subject to the terms on which power is delegated to a committee or advisory board and any directions from the Board:

- (a) a committee or advisory board is free to determine the rules that regulate its meetings and proceedings; and
- (b) in the absence of such a determination, the rules will be the same as those that govern the Executive in this Constitution, so far as they are applicable,

and the Board may change any of the powers, duties and functions of a committee or advisory committee, may remove any member of a committee or advisory board or dissolve a committee or advisory board at any time.

21. Proceedings of the Board

21.1 Procedure

Subject to this Constitution and the Corporations Act, the Board may meet, adjourn and otherwise regulate its meetings as it determines. The Board may invite any other Person it considers necessary or appropriate to attend and speak at any meeting but that Person is not entitled to a vote.

21.2 Calling

A Director may at any time, and the Secretary must on request from a Director, convene a meeting of the Board.

21.3 Notice

Each Director must be given notice of at least five business days (or such shorter period as consented to by each Director) of a meeting of the Board or the resumption of an adjourned meeting of the Executive. Notice may be given in any manner determined or adopted by the Board from time to time.

21.4 Use of technology

A meeting of the Board may be held using any audio, audio-visual or other technology:

- (a) that enables the participating Directors to simultaneously hear each other and participate in discussion; or
- (b) to which all Directors have consented.

21.5 Minutes

A minute certified by the Chairperson of such a meeting will be conclusive evidence of the proceedings at that meeting and the observance of all necessary formalities.

21.6 Consent

A Director's consent under clauses 21.3 and 21.4 may be a standing one and may only be withdrawn within a reasonable period before the meeting.

21.7 Quorum

The quorum necessary for the transaction of business at a meeting of the Board is half plus one of the total number of Directors unless the Board determines a greater number. A quorum must be present for the entire meeting.

21.8 When a Director is treated as present

If a meeting of the Board is held by audio or audio-visual technology a Director is treated as present if the Director is able to hear and be heard by all others attending, and if a meeting is held using any other technology consented to by all Directors, the Board must determine the basis on which Directors are treated as present.

21.9 Chairperson

The Chairperson (or, in the Chairperson's absence, the Deputy Chairperson) will chair every meeting of the Board. If:

- (a) there is no Chairperson or Deputy Chairperson;
- (b) neither the Chairperson nor the Deputy Chairperson is present within 15 minutes after the time appointed for holding the meeting; or
- (c) both the Chairperson and the Deputy Chairperson are unwilling to act as chair of the meeting,

the Directors present and entitled to vote will elect a Director to chair the meeting.

21.10 Decisions

Unless this Constitution specifically provides otherwise, resolution of the Board must be passed by a Majority. If an equal number of votes are cast for and against a resolution, the Chairperson has a casting vote in addition to the Chairperson's vote as a Director.

21.11 Too few Directors

The Directors may continue to act even if there are vacancies on the Board. If the number of Directors is reduced below the minimum required under clause 16.1, the continuing Directors may act as a Board only:

- (a) to convene a general meeting of Members; or
- (b) in emergencies.

21.12 Written resolutions passed by multiple Directors

The Directors may pass a resolution without holding a meeting of the Board if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

21.13 Signing written resolutions

For the purposes of clause 21.12, the Company may accept a copy of a signed document sent by facsimile or electronic means.

21.14 Valid proceedings

Each resolution passed or other thing done by or with the participation of a natural person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the natural person; or
- (b) the natural person was disqualified from continuing in office, voting on the resolution or doing that thing.

22. Chairperson

22.1 Appointment

The Chairperson shall be appointed by the Members of the Company at an annual general meeting of Members.

22.2 Term of Office

- (a) Subject to clause 22.3, the Chairperson holds office for a period of two years and, subject to clause 22.2(b), is eligible for re-appointment by Members at the cessation of that term.
- (b) The Chairperson may only hold office for a maximum of two consecutive terms.

22.3 Cessation of appointment

The Chairperson will automatically cease to hold office if he or she:

- (a) ceases to be a Director of the Company;
- (b) resigns by notice in writing to the Company; or
- (c) is removed from office by a Special Resolution of the Members of the Company.

22.4 Cessation before end of term

- (a) If the Chairperson ceases to hold office before the expiry of his or her term, the Deputy Chairperson, with the approval of the Board, will hold office as Chairperson until the next annual general meeting.
- (b) If the Chairperson ceases to hold office and there is no Deputy Chairperson or the Deputy Chairperson is unable or unwilling to act, a Chairperson will be elected by the Board and, will hold office until the next annual general meeting.

23. Secretary

23.1 Appointment

Subject to the Corporations Act, the Board must appoint a Secretary. The appointment may be made for a specified period or without specifying a period and the Board may remove the Secretary from office at any time.

23.2 Cessation of appointment

The Secretary will automatically cease to hold office if he or she:

- (a) is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a Secretary;
- (b) becomes bankrupt or enters into or becomes subject to any arrangement or composition with one or more of its creditors;
- (c) becomes mentally incapable or whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (d) resigns by notice in writing to the Company;
- (e) is removed from office under clause 23.1; or
- (f) the term for which he or she was appointed expires.

24. Minutes

24.1 Board must keep minutes

The Board must cause minutes to be kept of:

- (a) the proceedings and resolutions of meetings of Members;
- (b) the proceedings and resolutions of meetings of Directors and committees of Directors;

- (c) the names of Directors present at each meeting of Directors or committees of Directors;
- (d) any resolutions passed by Members or Directors with or without a meeting;
- (e) any disclosures or notices of Directors' interests; and
- (f) any other matters for which the Corporations Act requires minutes to be kept.

24.2 Minutes must be signed

Minutes must be signed in accordance with the Corporations Act. Minutes of a meeting must be signed within a reasonable time after the meeting or of the resolution being passed by:

- (a) the Chairperson or the chair of that meeting;
- (b) the Chairperson or the chair of the next meeting; or
- (c) in the case of a resolution passed without a meeting, a Director.

24.3 Minutes as evidence

A minute recorded and signed in accordance with the Corporations Act is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proven.

24.4 Access to minutes

The Company must ensure that the minute books for meetings of Members and for resolutions passed by Members without meetings are open for inspection by Members free of charge.

25. Treasurer

25.1 Appointment

Subject to the Corporations Act, the Board must appoint a Treasurer. The appointment may be made for a specified period or without specifying a period and the Board may remove the Treasurer from office at any time.

25.2 Money and accounts

The Treasurer shall collect and receive all money owed to the Company and make all payments authorised by the Board. The Treasurer shall also keep correct accounts showing the financial affairs of the Company, with full details of all receipts and expenditure connected with the activities and functions of the Company.

26. Seal and execution of documents

26.1 Common seal

The Board may decide whether or not the Company has a common seal. The Board is responsible for the safe custody of a common seal and any duplicate seals.

26.2 Use of seals

A common seal or duplicate seal may only be used with the authority of the Board.

26.3 Executing documents

Every document to which a common seal or duplicate seal is affixed must be signed by:

- (a) two Directors or a Director and a Secretary; or
- (b) any other natural person or combination of natural persons appointed by the Board to attest to the fixing of the seal.

If a document is not required at law to be executed under seal, it will be binding on the Company if signed by two Directors or a Director and a Secretary or some other natural person or combination of natural persons appointed by the Board for that purpose.

27. Accounts

27.1 Obligations

The Company must keep written financial records in accordance with the Corporations Act and prepare any reports required by the Corporations Act.

27.2 Inspection

Members and Directors shall have the right to inspect the Company's financial records except:

- (a) as authorised by the Board on terms determined by the Board; or
- (b) as required by the Corporations Act.

28. Audit

The Board must appoint an auditor unless the Members at a general meeting have appointed an auditor.

29. Notices

29.1 Method

A notice is properly given by the Company to a Person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature); and
- (b) either:
 - (i) delivered personally;
 - (ii) sent by post to that Person's registered address or an alternative address nominated by that Person; or

- (iii) sent electronically or by fax to an electronic address or fax number nominated by that Person.

29.2 Receipt

A notice given in accordance with clause 29.1 is taken as having been given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post:
 - (i) within Australia, on the second business day after the date of posting;
 - (ii) to or from a place outside Australia, on the seventh business day after the date of posting;
- (c) if transmitted by e-mail, on transmission; or
- (d) if transmitted by facsimile, at the time recorded on the transmission report indicating successful transmission of the entire notice,

but if the delivery or transmission is not on a business day or is after 5.00 pm (recipient's time) on a business day, the notice is taken to be received at 9.00 am (recipient's time) on the next business day.

29.3 Evidence of service

A certificate in writing signed by a Director or Secretary that a notice was sent is conclusive evidence of service.

30. Winding up

30.1 Distribution of trust assets

On the first to occur of:

- (a) the winding up of either of the Cultural Fund or the Environmental Fund; or
- (b) if either the Cultural Fund or the Environmental Fund are endorsed as a deductible gift recipient under subdivision 30 BA of the Tax Act, and either fund ceases to be endorsed as a deductible gift recipient under subdivision 30 BA of the Tax Act; or
- (c) either of the Cultural Fund or the Environmental Fund is endorsed as an income tax exempt charity under subdivision 50 B of the Tax Act, and either fund ceases to be endorsed as an income tax exempt charity under subdivision 50 B of the Tax Act,

any surplus assets of the relevant fund after satisfaction of all debts and liabilities of either the Cultural Fund or the Environmental Fund must be dealt with by the Company in accordance with either the Cultural Fund Trust Deed or the Environmental Fund Trust Deed and the Tax Act.

30.2 Distribution of Company's assets

On the first to occur of:

- (a) the winding up or deregistration of the Company; or
- (b) the Company ceasing to be a fund under item 1 of the table contained in section 30-15 of the Tax Act;

any surplus assets of the Company after satisfaction of all debts and liabilities of the Company must be paid, distributed or transferred to:

- (c) one or more Eligible Charities; or
- (d) to the extent required or permitted by the Tax Act, funds, charitable at law, which comply with the requirements of item 2 of the table in section 30-15 of the Tax Act.

30.3 Conditions of distribution to Eligible Charities

Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in the relevant table item in subdivision 30 B of the Tax Act are satisfied, a transfer under this clause 30 must be made in accordance with those conditions.

30.4 Identity of Eligible Charities

The identity of an Eligible Charity for the purposes of this clause 30 will be determined by the Board at or before the time of winding up or deregistration of the Company, the Company ceasing to be a fund under item 1 of the table contained in section 30-15 of the Tax Act, winding up or dissolution of the Gift Fund or revocation of the endorsement of the Gift Fund as a deductible gift recipient and (where applicable) approved by a Commissioner and, in default, will be determined by the Supreme Court of Victoria.

31. Indemnity and insurance

31.1 Indemnity and insurance

Subject to and to the maximum extent permitted under the law, the Company:

- (a) indemnifies each of its officers; and
- (b) may enter into and pay premiums on a contract insuring any of its officers,

against any liability incurred by an officer in that capacity, including any legal costs incurred in defending an action for such a liability.

31.2 Survival of indemnity

The indemnity in clause 31.1 will continue notwithstanding that an officer ceases to be an officer of the Company.

31.3 Indemnity and insurance subject to law

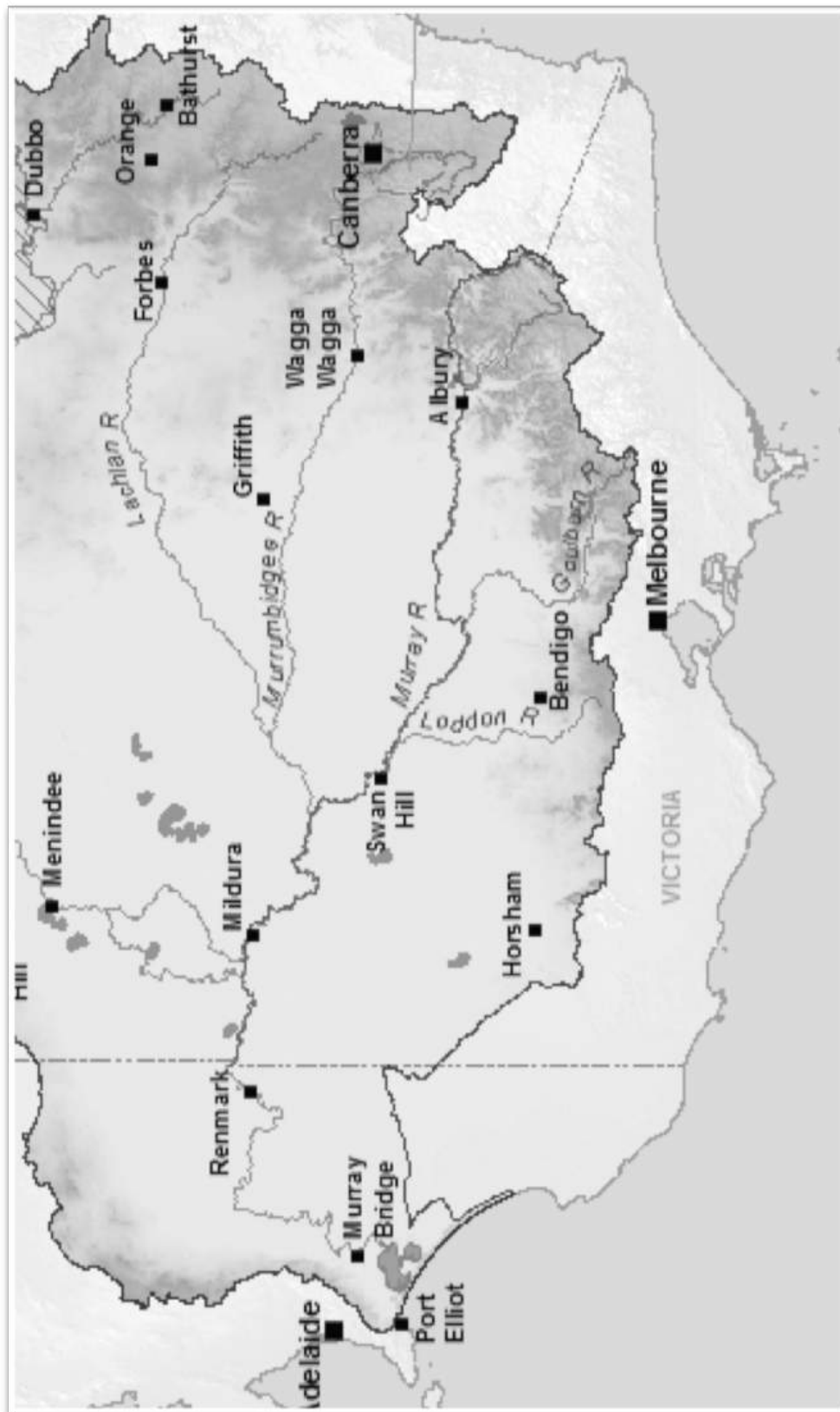
For the avoidance of doubt:

- (a) the indemnity in clause 31.1 does not apply so as to indemnify an officer from any liability for which the Company is prohibited from indemnifying the officer under the Corporations Act; and
- (b) the Company may not insure an officer against any liability for which the Company is prohibited from indemnifying the officer under the Corporations Act.

32. Sovereign Rights

Any adherence by the Members and Directors of the Company to this Constitution, or the laws applicable to this Constitution and the operation of the Company, will not be seen to relinquish the sovereign rights and interests over land, sea, air and water by the Members or Directors of the Company who are members of the Nations.

SCHEDULE 1- MAP OF TRADITIONAL REGION



SCHEDULE 2– POWER TO REPRIMAND, FINE OR EXPEL A MEMBER

