

# Water Stewardship Australia Limited

## CONSTITUTION

### PART 1 – CONTENTS

#### 1. Contents

The contents of this constitution are:

#### PART 1 – CONTENTS

##### 1. Contents

#### PART 2 – NAME, OBJECT & POWERS

2. Name
3. Object
4. Legal Capacity and Powers
5. Not For Profit

#### PART 3 – MEMBERSHIP

6. Eligibility
7. Applications
8. Approval
9. Subscriptions
10. Rights and Obligations
11. Liability
12. Discipline
13. Resignation
14. Cessation
15. Register of Members
16. Grievance Procedure

#### PART 4 – GENERAL MEETINGS

17. Annual General Meeting
18. Special General Meetings
19. Notice
20. Representatives
21. Proxies
22. Use of Technology
23. Quorum
24. Chairing
25. Voting
26. Poll

#### PART 5 – DIRECTORS

27. Number and Type
28. Election
29. Co-option
30. Term of Office
31. Notification to ASIC
32. Duties

#### PART 5 – DIRECTORS *contd*

33. Remuneration
34. Indemnity

#### PART 6 – OFFICE-BEARERS

35. Positions
36. Election
37. Term of Office
38. Secretary

#### PART 7 – THE BOARD

39. Membership
40. Responsibility and Powers
41. Regulations
42. Public Statements

#### PART 8 – BOARD MEETINGS

43. Convening
44. Notice
45. Use of Technology
46. Quorum
47. Chairing
48. Voting
49. Disclosure of Interest
50. Leave of Absence
51. Resolutions without Meeting

#### PART 9 – FINANCIAL AND LEGAL

52. Sources of Funds
53. Financial Year
54. Accounts
55. Audit
56. Payments
57. Common Seal
58. Minutes
59. Records
60. Amendment
61. Winding Up
62. Tax Deductibility
63. Notices
64. Replaceable Rules
65. Interpretation
66. Transitional

#### PART 10 – INDEX

67. Index

## **PART 2 – NAME, OBJECT AND POWERS**

### **2. Name**

The name of the company is “Water Stewardship Australia Limited”.

### **3. Object**

3.1 In this clause “water stewardship” means the responsible use of fresh water in a way that is both socially beneficial and environmentally sustainable, including:

- (a) water use that is *environmentally sustainable* in that it maintains and improves biodiversity and ecological processes at the watershed level;
- (b) water use that is *socially beneficial* in that it recognises basic human needs and ensures long-term benefits (including economic benefits) for local people and society at large; and
- (c) water use that is *economically sustainable* in that it minimises corporate risk while ensuring that water is available for a multitude of economic benefits and uses over the long-term.

3.2 The object of the company is the protection and enhancement of the natural environment through the development, communication and promotion of water stewardship in Australia and the Asia Pacific region.

3.3 The company will achieve its object by:

- (a) developing the concept, the organisation, the business model and the value proposition for a water stewardship system;
- (b) building a stakeholder engagement process that can support this development;
- (c) facilitating pilot studies and trials of a water stewardship system;
- (d) establishing and operating a water stewardship system; and
- (e) representing Australian stakeholders in international forums and acting as the Australian representative of the Alliance for Water Stewardship (AWS).

### **4. Legal Capacity and Powers**

4.1 The company has:

- (a) the legal capacity and powers of an individual, and
- (b) all the powers of an incorporated body, as provided by section 124 of the Corporations Act.

4.2 The company may only:

- (a) exercise its powers; and
- (b) use its income and assets (including any surplus);

for its object.

### **5. Not For Profit**

5.1 The income and property of the organisation shall be used and applied solely in promotion of its objectives and no portion shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to members, directors, or trustees of the organisation.

5.2 Clause 5.1 does not prevent the company from paying its members:

- (a) reimbursement for expenses properly incurred by them, and
- (b) for goods supplied and services provided by them,

if this is done in good faith on terms no more favourable than if the member were not a member.

5.3 Any allocation of funds or property to other persons or organisations will be made in accordance with the established purpose of the organisation and not be influenced by the preference of the donor.

## **PART 3 – MEMBERSHIP**

### **6. Eligibility**

6.1 Any person who supports the object of the company is eligible for membership.

6.2 In clause 6.1 “person” includes an individual, incorporated body or unincorporated body, and part of an incorporated or unincorporated body, subject to clause 6.3.

6.3 An unincorporated body, or part of an incorporated or unincorporated body may

only become a member by nominating an individual or incorporated body to be a member on its behalf.

- 6.4 In this constitution, unless the contrary intention appears, “member” includes an unincorporated body, or part of an incorporated or unincorporated body represented by a member in accordance with clause 6.3.

## **7. Applications**

- 7.1 Applications for membership must be:
- (a) in writing, stating that the applicant:
    - (i) wishes to become a member of the company;
    - (ii) supports the object of the company;
    - (iii) agrees to comply with the constitution and regulations of the company; and
    - (iv) undertakes to contribute up to \$10 to the company’s property, if the company is wound up;
  - (b) accompanied by the first subscription; and
  - (c) sent or given to the company.
- 7.2 The Board may by regulation prescribe a membership application form for the purposes of clause 7.1(a), in which case applications for membership must be in the prescribed form.

## **8. Approval**

- 8.1 The Board must:
- (a) by resolution approve or reject the application; and
  - (b) notify the applicant whether the application has been approved or rejected.
- 8.2 No reason need be given for the rejection of an application.
- 8.3 If the Board approves the application:
- (a) the applicant becomes a member from the date of the Board meeting; and
  - (b) the name and address of the new member, and the date of becoming a member must be entered in the register of members.

- 8.4 If the Board rejects the application, it must return the subscription to the applicant.

## **9. Subscriptions**

- 9.1 The Board must by regulation set the subscription.
- 9.2 The amount of the subscription and the date for payment may vary according to criteria set by the Board in the regulation.
- 9.3 The voting and other rights of members who have not paid the subscription by the date for payment are suspended until the subscription is paid.

## **10. Rights and Obligations**

- 10.1 The rights of members are not transferable, and end when the member ceases to be a member in accordance with clause 14.
- 10.2 By becoming and remaining members, members agree to support the object of the company.
- 10.3 Members also agree that all intellectual property created by them while participating in the company belongs to the company and must not be used without its permission unless otherwise agreed between the company and the member.
- 10.4 Members must at all times comply with the constitution and regulations.
- 10.5 This constitution is an enforceable contract between the company and each member, as provided by section 140 of the Corporations Act.

## **11. Liability**

- 11.1 The liability of members is limited to the amount specified in clause 11.2.
- 11.2 If the company is wound up, each member undertakes to contribute up to \$10 to the company’s property.
- 11.3 In clause 11.2 “member” includes a former member who was a member at any time during the year ending on the day of the commencement of the winding up, subject to clause 11.4.
- 11.4 Former members need not contribute in respect of a debt or liability of the company contracted after they ceased to be a member.

## 12. Discipline

- 12.1 The Board may by resolution passed by an absolute majority reprimand, suspend or expel a member for:
- (a) failing to comply with the constitution or regulations; or
  - (b) conduct prejudicial to the company.
- 12.2 The Board must not pass a resolution under clause 12.1 unless the member has been:
- (a) informed of what it is alleged the member has done; and
  - (b) given a reasonable opportunity to be heard.
- 12.3 The company may not fine members.
- 12.4 Without limiting clause 40.3, the Board may delegate its powers under this clause to a discipline committee appointed by the Board.
- 12.5 The members of the discipline committee need not be directors or members of the company.
- 12.6 Clauses 12.1 and 12.2 apply to the discipline committee in the same way as the Board.

## 13. Resignation

- 13.1 Members may resign by writing to the company.
- 13.2 Members whose subscriptions are more than 1 year in arrears are taken to have resigned.

## 14. Cessation

- 14.1 Members cease to be members:
- (a) on resignation, expulsion or ceasing to have legal capacity; and
  - (b) in the case of members nominated to act on behalf of an unincorporated body, or part of an incorporated or unincorporated body under clause 6.3 who are not members in their own right – when another member is nominated.
- 14.2 If a member ceases to be a member, the date of ceasing to be a member must be entered in the register of members.

## 15. Register of Members

The Board must ensure that a register of members is kept as required by section 169 of the Corporations Act in which are entered:

- (a) the name of each member,
- (b) the address for notices last given by the member,
- (c) the date of becoming a member, and
- (d) in the case of former members – the date of ceasing to be a member.

## 16. Grievance Procedure

- 16.1 The grievance procedure in this clause applies to disputes under this constitution between:
- (a) a member and another member, and
  - (b) a member and the Board or the company.
- 16.2 The parties must first attempt to resolve the dispute themselves.
- 16.3 If the parties are unable to resolve the dispute, the Board must appoint a mediator.
- 16.4 The mediator:
- (a) must not have a personal interest in the dispute;
  - (b) must not be biased in favour of or against any party;
  - (c) may be a member or former member; and
  - (d) if possible, must be appointed with the agreement of all parties.
- 16.5 The mediator must conduct a mediation at which each party is given a reasonable opportunity to be heard.
- 16.6 The parties must in good faith attempt to resolve the dispute by mediation.
- 16.7 The mediator may during, and must at the end of, the mediation attempt to resolve the dispute by agreement between the parties.
- 16.8 If the mediator is unable to resolve the dispute by agreement between the parties, the mediator must determine the respective rights and obligations under this constitution of the parties and any other members.
- 16.9 A determination of a mediator under clause 16.8 is binding on the parties and all members.
- 16.10 A party may appoint another person to act on its behalf in the grievance procedure.

## **PART 4 – GENERAL MEETINGS**

### **17. Annual General Meeting**

- 17.1 The Board must convene an annual general meeting to be held:
- (a) at least once in each calendar year, and
  - (b) within 5 months after the end of the company's financial year,
- as required by section 250N of the Corporations Act.
- 17.2 The Board must send members copies of the reports referred to in clause 17.3 with the notice of the annual general meeting so as to comply with sections 314 and 315 of the Corporations Act.
- 17.3 The Board must lay before the annual general meeting the annual financial report, directors' report and auditor's report for the last financial year as required by section 317 of the Corporations Act.
- 17.4 The ordinary business of the annual general meeting is:
- (a) to verify the minutes of:
    - (i) the last annual general meeting, and
    - (ii) any special general meetings since the last annual general meeting;
  - (b) to consider the annual financial report, directors' report and auditor's report (including questions and comments from members on the management of the company); and
  - (c) to elect 2 directors in accordance with clause 28.
- 17.5 The annual general meeting may only consider other business of which notice has been given in accordance with clause 19.2(c).

### **18. Special General Meetings**

- 18.1 The Board may convene a special general meeting.
- 18.2 The Board must convene a special general meeting if requested by members in accordance with section 249D of the Corporations Act.
- 18.3 Members may themselves convene a special general meeting in accordance with section 249F of the Corporations Act.

- 18.4 Special general meetings may only consider business of which notice has been given in accordance with clause 19.2(c).

### **19. Notice**

- 19.1 At least 21 days notice in writing of general meetings must be given to:
- (a) each member (including each director), and
  - (b) the company's auditor.
- 19.2 The notice must state:
- (a) the date, time and place (or places) of the meeting,
  - (b) if the meeting is to be held at more than 1 place – the technology that will be used,
  - (c) the general nature of each item of business to be considered, and
  - (d) if a special resolution is to be proposed:
    - (i) the proposed resolution, and
    - (ii) that it is intended that the resolution be proposed as a special resolution,
- as required by section 249L(1) of the Corporations Act.
- 19.3 The notice must include under clause 19.2(c) any business that any member has requested in writing be considered.
- 19.4 The notice must also include:
- (a) a statement that members that are incorporated bodies may appoint a representative to attend, speak and vote on their behalf in accordance with clause 20,
  - (b) a statement that:
    - (i) all members have the right to appoint a proxy to attend, speak and vote instead of the member in accordance with clause 21, and
    - (ii) proxies need not be members,
- as required by section 249L(1)(d) of the Corporations Act, and
- (c) a copy of clauses 20 and 21.
- 19.5 The notice may (but need not) include forms of appointment for the purposes of clauses 19.4, 20 and 21.

- 19.6 If a general meeting is adjourned for 1 month or more, new notice of the resumed meeting must be given.
- 19.7 Despite clause 19.1, the accidental omission to give notice of the meeting to a person entitled to notice, or the non-receipt of notice of the meeting by a person entitled to notice does not invalidate the meeting, except as provided by section 1322(3) of the Corporations Act.

## **20. Representatives**

- 20.1 Members that are incorporated bodies may appoint individuals to represent them at general meetings, as provided by section 250D of the Corporations Act.
- 20.2 Appointments of representatives must be:
- (a) in writing, naming the individual (or individuals, in order) appointed;
  - (b) sealed by, or signed on behalf of, the member making the appointment; and
  - (c) given to the chair of the meeting before or at the commencement of the meeting.
- 20.3 Representatives may exercise all the rights of members at general meetings.

## **21. Proxies**

- 21.1 Members entitled to vote at the general meeting may appoint any person (including another member) as a proxy, as provided by section 249X(1) of the Corporations Act.
- 21.2 Appointments of proxies must be:
- (a) in writing, naming the person (or persons, in order) appointed;
  - (b) where the appointment is made by an individual – signed by the member; or
  - (c) where the appointment is made by an incorporated body – sealed by the member or signed on its behalf; and
  - (d) given to the chair of the meeting before or at the commencement of the meeting.
- 21.3 Appointments of proxies are valid if they contain the information required by clause 21.2, despite section 250A(1) of the Corporations Act.
- 21.4 Proxies may exercise all the rights of members at general meetings.

## **22. Use of Technology**

General meetings may be held at more than 1 place, provided that the technology used enables each member and proxy present at all places the meeting is held to clearly and simultaneously communicate with every other such person.

## **23. Quorum**

- 23.1 The quorum for consideration of the ordinary business of the annual general meeting is the presence in person or by representative of at least 5 members entitled to vote.
- 23.2 The quorum for consideration of a proposed resolution (including a special resolution) recommended by the Board is the presence in person, by representative or by proxy of at least 10% of members entitled to vote.
- 23.3 The quorum for the consideration of all other business at general meetings is the presence in person, by representative or by proxy of at least 25% of members entitled to vote.
- 23.4 If a quorum is not present within 30 minutes from the time of the meeting of which notice has been given, the meeting must not proceed.

## **24. Chairing**

- 24.1 The Chair is entitled to chair general meetings.
- 24.2 If the Chair is not present, or does not wish to chair the meeting, the Deputy Chair is entitled to chair.
- 24.3 If neither the Chair nor the Deputy Chair is present, or if neither wishes to chair the meeting, the meeting must elect another member to chair.
- 24.4 The chair of the meeting has a deliberative vote, but does not have a casting vote.

## **25. Voting**

- 25.1 All members are entitled to vote at general meetings, except those whose voting rights have been suspended under clause 9.3 or 12.1.
- 25.2 Each member has 1 vote.
- 25.3 Members may vote in person, by representative or by proxy.
- 25.4 Unless a poll is demanded, voting is by show of hands.

- 25.5 Proxies are not entitled to vote on a show of hands (but this does not prevent members appointed as proxies from voting as members on a show of hands).
- 25.6 If an equal number of votes are cast for and against a proposed resolution or amendment, the chair of the meeting must declare the proposed resolution or amendment lost.
- 25.7 A challenge to a right to vote:
- (a) may only be made at the meeting; and
  - (b) must be determined by the chair of the meeting, whose decision is final.
- 26. Poll**
- 26.1 Any person entitled to vote (including proxies and the chair of the meeting) may demand a poll on any resolution, other than a resolution concerning:
- (a) the election of the chair of the meeting, or
  - (b) the adjournment of the meeting.
- 26.2 The poll may be demanded:
- (a) before a vote is taken,
  - (b) before the voting results on a show of hands are declared, or
  - (c) immediately after the voting results on a show of hands are declared.
- 26.3 The poll must be taken when and in the manner the chair of the meeting directs.
- 26.4 On a poll, proxies:
- (a) need not cast any or all of their votes as proxies, unless they are the chair of the meeting;
  - (b) may cast their votes in different ways; and
  - (c) if:
    - (i) they do cast votes as proxies; and
    - (ii) the appointment of proxy specifies the way the proxy is to vote on a proposed resolution;
 must vote that way.
- 26.5 A demand for a poll may be withdrawn.

## PART 5 – DIRECTORS

### 27. Number and Type

- 27.1 The company has between 6 and 9 directors:
- (a) 6 elected directors – 2 elected each year under clause 28, with staggered 3 year terms; and
  - (b) up to 3 co-opted directors – appointed under clause 29.
- 27.2 Directors must be people who bring relevant skills and expertise to the Board and reflect a diversity of perspectives on water in Australia including (but not limited to) business, social and cultural, environmental and water management perspectives.
- 27.3 The company does not have:
- (a) alternate directors, or
  - (b) a managing director.

### 28. Election

- 28.1 Each annual general meeting must elect 2 directors.
- 28.2 Only individuals who are:
- (a) members, or
  - (b) representatives of members,
- entitled to vote at the annual general meeting are eligible to be elected as directors.
- 28.3 The Board may make regulations for the conduct of the election of directors.
- 28.4 If the Board has not made regulations under clause 28.3, the annual general meeting may decide the method of election.

### 29. Co-option

- 29.1 The Board may:
- (a) at its first meeting after the annual general meeting each year, and
  - (b) at any subsequent meeting,
- appoint up to 3 individuals as co-opted directors.
- 29.2 The Board may by resolution decide when the term of office of a co-opted directors is to begin and end.

### 30. Term of Office

- 30.1 Before the election or appointment of a director takes effect:

- (a) the director must give the company a signed consent to act as a director as required by section 201D of the Corporations Act; and
  - (b) a director who is not already a member must become a member.
- 30.2 Elected directors hold office:
- (a) from the end of the annual general meeting at which they are elected,
  - (b) until the end of the third annual general meeting after they are elected,
- subject to clauses 30.1 and 30.4–30.7.
- 30.3 Co-opted directors hold office:
- (a) from the time they are co-opted,
  - (b) until the end of the annual general meeting after they are co-opted,
- subject to clauses 29.2, 30.1 and 30.4–30.7.
- 30.4 Directors may be re-elected and reappointed.
- 30.5 Directors may resign by writing to the company.
- 30.6 Directors cease to hold office if they:
- (a) cease to be a member;
  - (b) fail to attend 3 consecutive Board meetings without leave of absence under clause 50;
  - (c) receive any payment from the company otherwise than in accordance with this constitution; or
  - (d) become disqualified under Part 2D.6 of the Corporations Act, subject to sections 206F(5) and 206G of the Corporations Act.
- 30.7 Directors may be removed by a general meeting in accordance with section 203D of the Corporations Act. The resulting vacancy may be filled at the general meeting.
- 30.8 If there is a vacancy in directors (including a vacancy under clause 30.7 not filled at the general meeting), the Board may appoint an individual who would be eligible to be elected under clause 28.2 to fill the vacancy for the remainder of the term of office.
- 30.9 The Board may continue to act despite any vacancy in directors.
- 30.10 Even if it is subsequently found that a person who has acted as a director was not properly elected or appointed, the validity of:

- (a) the acts of that person as a director, and
  - (b) decisions of Board meetings in which that person has participated;
- is not affected.

### **31. Notification to ASIC**

The company must notify ASIC within 28 days of any change in its directors or Secretary, or their personal details as required by section 205B of the Corporations Act.

### **32. Duties**

32.1 Each director has the duties prescribed by the Corporations Act, including under Part 2D.1 those of:

- (a) reasonable care and diligence,
- (b) good faith and proper purpose,
- (c) proper use of position, and
- (d) proper use of information.

32.2 Without limiting clause 32.1, each director also has a fiduciary duty to act in the best interests of the company as a whole.

### **33. Remuneration**

The Board may by regulation set reasonable remuneration to be paid to directors for administrative services and reimbursement for expenses, subject to section 211 of the Corporations Act.

### **34. Indemnity**

The company indemnifies its directors and Secretary against any liability incurred in that capacity (other than to the company or a related body corporate), unless the liability did not arise out of conduct in good faith.

## **PART 6 – OFFICE-BEARERS**

### **35. Positions**

35.1 The office-bearers of the company are:

- (a) Chair,
- (b) Deputy Chair, and
- (c) Secretary,

subject to clause 35.2.

35.2 The Board may by regulation establish other office-bearer positions.



### **36. Election**

- 36.1 The Board must at its first meeting after the annual general meeting each year elect the office-bearers (other than the Secretary) from among the directors.
- 36.2 A director who has already been elected to a particular office-bearer position 5 consecutive times (including filling a vacancy) is not eligible to be elected again to that position without a break of at least 5 years.

### **37. Term of Office**

- 37.1 Office-bearers hold office from the time of their election until their successor is elected, subject to clauses 37.2–37.4.
- 37.2 Office-bearers may resign by writing to the company.
- 37.3 Office-bearers who cease to be directors, other than by the expiry of their term of office, cease to be office-bearers.
- 37.4 Office-bearers may be removed by resolution passed by an absolute majority of the Board.
- 37.5 The Board must as soon as practicable fill vacancies in office-bearer positions for the remainder of the term.
- 37.6 This clause does not apply to the Secretary.

### **38. Secretary**

The Board must appoint a Secretary of the company in accordance with Part 2D.4 of the Corporations Act.

## **PART 7 – THE BOARD**

### **39. Membership**

The members of the Board are the directors of the company.

### **40. Responsibility and Powers**

- 40.1 The Board is responsible for the management of the company.
- 40.2 The Board may exercise all powers of the company on its behalf.
- 40.3 The Board may:
- (a) establish committees with such membership and terms of reference as it thinks appropriate; and

- (b) delegate its powers as it thinks appropriate.

### **41. Regulations**

- 41.1 The Board may by resolution passed by an absolute majority make regulations to give effect to this constitution.
- 41.2 Members must at all times comply with the regulations as if they formed part of this constitution.

### **42. Public Statements**

- 42.1 The Board may by regulation or resolution authorise an office-bearer, director or other person to make public statements on behalf of the company.
- 42.2 No person may make any public statement on behalf of the company unless authorised by the Board.

## **PART 8 – BOARD MEETINGS**

### **43. Convening**

- 43.1 The Secretary, Chair or any 3 directors may convene a Board meeting.
- 43.2 Ordinary Board meetings must be held at least 6 times each year.
- 43.3 At the first meeting after it is elected the Board must by resolution set the dates, times and places of ordinary meetings for its term of office.
- 43.4 The Board may by resolution subsequently change the dates, times and places of ordinary meetings.

### **44. Notice**

- 44.1 Each director must be given at least 7 days notice in writing of Board meetings, subject to clause 44.4.
- 44.2 Notice may be given of more than 1 Board meeting at the same time.
- 44.3 The notice must include the date, time and place (or places) of the meeting, but need not include the business to be considered.
- 44.4 In cases of urgency a meeting may be held without the notice required by clause 44.1, provided that:
- (a) as much notice as practicable is given to each director by the quickest practicable means; and

- (b) resolutions may only be passed by an absolute majority.

#### **45. Use of Technology**

- 45.1 Board meetings may be held at more than 1 place, provided that the technology used enables each director present at all places the meeting is held to clearly and simultaneously communicate with every other such director.
- 45.2 Without limiting clauses 44.4(a) and 45.1, Board meetings may be convened and held by telephone.
- 45.3 By becoming and remaining a director, all directors are taken to consent to this clause.

#### **46. Quorum**

The quorum for Board meetings is the presence in person of a majority of the directors at the time.

#### **47. Chairing**

- 47.1 The Chair is entitled to chair Board meetings.
- 47.2 If the Chair is not present, or does not wish to chair the meeting, the Deputy Chair is entitled to chair.
- 47.3 If neither the Chair nor the Deputy Chair is present, or if neither wishes to chair the meeting, the Board must elect another director to chair.
- 47.4 The chair of the meeting has a deliberative vote, but does not have a casting vote.

#### **48. Voting**

- 48.1 Each director present at a Board meeting has 1 vote.
- 48.2 There is no voting by proxy.
- 48.3 If an equal number of votes are cast for and against a motion or amendment, the chair of the meeting must declare the motion or amendment lost.

#### **49. Disclosure of Interest**

- 49.1 Each director who has a material personal interest in a matter that relates to the affairs of the company must as soon as practicable after becoming aware of the interest give the other directors notice of the interest at a Board meeting, unless otherwise provided by section 191(2) of the Corporations Act.

- 49.2 The notice required by clause 49.1 must include details of:

- (a) the nature and extent of the interest, and
- (b) the relation of the interest to the affairs of the company;

and these details must be recorded in the minutes of the meeting.

- 49.3 Each director who has a material personal interest in a matter that is being considered at a Board meeting:

- (a) must not be present while the matter is being considered; and
- (b) must not vote on the matter;

except as provided by section 195 of the Corporations Act.

#### **50. Leave of Absence**

- 50.1 The Board may by resolution grant directors leave of absence from Board meetings for up to 3 months.
- 50.2 The Board may not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the director concerned to seek leave of absence in advance.

#### **51. Resolutions without Meeting**

- 51.1 A resolution agreed to in writing by all directors has the same effect as a resolution passed at a Board meeting.
- 51.2 In clause 51.1 “all directors” does not include those directors who:
  - (a) would be prohibited by clause 49.3 from voting on the matter at a Board meeting; or
  - (b) have leave of absence from Board meetings under clause 50.

### **PART 9 – FINANCIAL AND LEGAL**

#### **52. Sources of Funds**

The funds of the company may be derived from subscriptions, donations, fund-raising activities, grants, sales, interest and any other sources approved by the Board.

#### **53. Financial Year**

The financial year of the company is from 1 January to 31 December, unless the Board

otherwise determines under section 323D of the Corporations Act.

#### **54. Accounts**

The company must keep written financial records that:

- (a) correctly record and explain its transactions, and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited;

as required by section 286 of the Corporations Act.

#### **55. Audit**

55.1 The Board must appoint an auditor within 1 month of registration of the company as required by section 327A(1) of the Corporations Act.

55.2 The first annual general meeting must appoint an auditor as required by section 327B(1)(a) of the Corporations Act.

55.3 The Board must within 1 month fill a vacancy in auditor until the next annual general meeting as required by section 327C(1) of the Corporations Act.

55.4 The annual general meeting must fill any vacancy in auditor as required by section 327B(1)(b) of the Corporations Act.

55.5 The company must have its annual financial report audited in accordance with section 301(1) of the Corporations Act.

#### **56. Payments**

56.1 All payments by the company must be:

- (a) specifically authorised in writing, and
- (b) in the case of cheques – signed, by at least 2 persons nominated by the Board by regulation or resolution.

56.2 The Board may nominate a list of individuals or positions for the purposes of clause 56.1.

56.3 Signatories must not sign cheques until the payee and amount have been written in.

#### **57. Common Seal**

57.1 Under section 123(1) of the Corporations Act the company may have a common seal.

57.2 Clauses 57.3–57.7 only apply if the company has a common seal.

57.3 The company must set out its name and ACN (or ABN) on the common seal as required by section 123(1)(b) of the Corporations Act.

57.4 A document may only be sealed with the common seal if authorised by resolution of the Board.

57.5 The sealing must be witnessed by the signatures of at least 2 directors nominated by the Board by regulation or resolution.

57.6 The Board may nominate a list of individuals or positions to be signatories for the purpose of clause 57.5.

57.7 The Board must provide for the safe keeping of the common seal.

#### **58. Minutes**

The Board must ensure that:

- (a) minutes are taken and kept of all general meetings, Board meetings and resolutions without a meeting; and
- (b) in the case of minutes of meetings – the minutes are signed within a reasonable time after the meeting by the chair of the meeting or the chair of the next meeting; or
- (c) in the case of minutes of resolutions without a meeting – the minutes are signed by a director within a reasonable time after the resolution is passed;

as required by section 251A of the Corporations Act.

#### **59. Records**

59.1 The Board must provide for the safe keeping of the records of the company.

59.2 Members may inspect the records of the company at any reasonable time, subject to clause 59.3.

59.3 Members may not inspect the records of the company that relate to confidential personal, employment, commercial and legal matters.

59.4 Copies of the constitution and regulations must be freely available to members and applicants for membership.

## 60. Amendment

60.1 This constitution may only be amended by special resolution, as provided by section 136(2) of the Corporations Act.

60.2 Within 14 days after passing a special resolution to amend this constitution, the company must lodge with ASIC copies of:

- (a) the special resolution, and
- (b) the amendment,

as required by section 136(5) of the Corporations Act.

## 61. Winding Up

61.1 If the company is wound up, its remaining assets must not be distributed to any member.

61.2 The remaining assets must be given to an entity that:

- (a) has a similar object to the company; and
- (b) also prohibits the distribution of any surplus, income and assets to its members to at least as great an extent as the company;

subject to clauses 62.2(i) and 62.2(j).

61.3 If the company is wound up voluntarily, the entity to which its remaining assets are to be given must be decided by special resolution.

61.4 In this clause “entity” includes body, trust and fund.

## 62. Tax Deductibility

62.1 In this clause:

- (a) “contributions” and “fund-raising event” have the same meaning as in Division 30 of the Tax Act;
- (b) “DGR” means a deductible gift recipient under Division 30 of the Tax Act;
- (c) “register of environmental organisations” means the register of environmental organisations under Subdivision 30-E of the Tax Act; and
- (d) “the Tax Act” means the Commonwealth *Income Tax Assessment Act 1997*.

62.2 If the company has been endorsed as a DGR on the register of environmental organisations:

- (a) The company will establish and maintain a public fund call the WSA Public Fund for the specific purpose of supporting the environmental objectives and purposes of Water Stewardship Australia Limited:
  - (i) to which gifts of money or property for that purpose are to be made;
  - (ii) to which contributions in relation to a fund-raising event held for that purpose are to be made;
  - (iii) to which any money received by the company because of such gifts or contributions is to be credited;
  - (iv) that does not receive any other money or property;
  - (v) that receives all money from interest on donations, income derived from donated property, and money from the realisation of such property;
  - (vi) that complies with section 30-E of the Income Tax Assessment Act 1997 (and as it may be amended from time to time); and
  - (vii) that is operated on a not for profit basis.
- (b) the company must operate a separate bank account for the public fund;
- (c) the company must use the public fund only for the principal purpose of the company;
- (d) the company must invite the public to contribute to the public fund;
- (e) receipts issued in the name of the public fund will contain the following elements:
  - (i) the number of the receipt
  - (ii) the date the donation was received
  - (iii) name of the organisation
  - (iv) the organisation’s Australian Business Number (ABN)
  - (v) name of the fund
  - (vi) signature of a person authorised to act on behalf of the fund
  - (vii) name of the donor

- (viii) an indication that the fund is listed on the Register
- (ix) that the amount is for a gift
- (f) receipts for contributions to the company must include:
  - (i) the name and ABN of the company, and
  - (ii) the other information required by section 30-228 of the Tax Act;
- (g) the company must keep records that record and explain all transactions and other acts it engages in relevant to its status as a DGR for at least 5 years;
- (h) the records must show that the company uses:
  - (i) gifts and contributions, and
  - (ii) money received because of such gifts and contributions,
 only for the principal purpose of the company;
- (i) on winding up of the public fund or revocation of its endorsement (whichever occurs earlier), any surplus assets of the public fund must be transferred to another public fund that is on the register of environmental organisations;
- (j) on winding up of the company its remaining assets other than any surplus assets of the public fund must also be given to another public fund that is on the register of environmental organisations;
- (k) the company must notify the Australian Taxation Office of any changes to this constitution within 14 days;
- (l) a committee of management of no fewer than three persons will administer the fund. The committee will be appointed by the organisation. A majority of members of the committee are required to be 'responsible persons' as defined by the Guidelines to the Register of Environmental Organisations; and
- (m) the organisation must inform the Department responsible for the environment as soon as possible if:
  - (i) it changes its name of the name of its public fund; or
  - (ii) there is any change in the membership of the management committee of the public fund; or
  - (iii) there has been any departure from the model rules for public funds located in the Guidelines to the Register of Environmental Organisations.
- (n) The organisation must comply with any rules that the Federal Treasurer and the Federal Minister with responsibility for the environment may make to ensure that gifts made to the fund are only used for its principal purpose.
- (o) Statistical information requested by the Federal Department with responsibility for the environment on donations to the Public Fund will be provided within four months of the end of the financial year. An audited statement of the organisation and its public fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of public fund monies and the management of public fund assets.

### **63. Notices**

- 63.1 Members (including directors) must give the company their address for notices, and any change in that address.
- 63.2 The address for notices may include an email address and a fax number.
- 63.3 The company must enter any change in the address of a member in the register of members.
- 63.4 Notice may be given to a member or director by sending it to the address last given by the member or director.
- 63.5 In this constitution a period of notice of a meeting expressed in days:
  - (a) does not include the day on which notice is given; but
  - (b) includes the day on which the meeting is held.
- 63.6 Notices sent by prepaid post are taken to have been given on the second business day after posting.
- 63.7 Notices sent by email or fax are taken to have been given on the business day after sending.

## 64. Replaceable Rules

The replaceable rules in the Corporations Act do not apply to the company, except those in sections 204F, 248G(1), 249M, 249U(4), 249W(2), 250C(2) and 250J(2).

## 65. Interpretation

- 65.1 In this constitution, unless the contrary intention appears:
- (a) “absolute majority” means a majority of the votes of all directors entitled to vote at the time, whether or not those directors are present, and whether or not they vote;
  - (b) “ASIC” means the Australian Securities and Investments Commission;
  - (c) “the company” means the company named in clause 2;
  - (d) “convene” means call and arrange to hold, and includes setting the date, time and place of the meeting;
  - (e) “member” has the extended meanings given in clauses 6.4, 20.3 and 21.4;
  - (f) “regulations” means regulations of the company made under clause 41, and “regulation” has a corresponding meaning;
  - (g) “special resolution” means a resolution at a general meeting:
    - (i) of which notice has been given in accordance with clause 19.2(d); and
    - (ii) that is passed by at least 75% of the votes cast (in person, by representative or by proxy) by members entitled to vote on the resolution;in accordance with sections 9 and 249L(1)(c) of the Corporations Act; and
  - (h) “in writing” includes emails, and forms and other documents submitted electronically.
- 65.2 The headings form part of this constitution.
- 65.3 This constitution is to be interpreted in accordance with the Corporations Act, except as otherwise provided in this clause.
- 65.4 The Board is responsible for the interpretation of the constitution and regulations.

## 66. Transitional

- 66.1 The first members of the company are: Environment Victoria Incorporated, Inghams Enterprises Pty Limited, The Nature Conservancy, Les Hosking, Angus Kinnaird, Juliet Le Feuvre, Kevin O’Grady, Jamie Pittock, Steven Ross, Julia Seddon, Michael Spencer and Kate Vinot, subject to each of them giving the company an undertaking in writing to contribute up to \$10 to the company’s property as a member if it is wound up, as required by clause 11.2.
- 66.2 The first directors of the company are: Les Hosking, Juliet Le Feuvre, Jamie Pittock, Steven Ross, Julia Seddon and Kate Vinot, subject to each of them giving the company a signed consent to act as a director, as required by clause 30.1(a) and section 201D of the Corporations Act.
- 66.3 Despite anything to the contrary in this constitution:
- (a) Les Hosking and Juliet Le Feuvre hold office as directors until the end of the annual general meeting in 2011;
  - (b) Julia Seddon and Kate Vinot hold office as directors until the end of the annual general meeting in 2012; and
  - (c) Jamie Pittock and Steven Ross hold office as directors until the end of the annual general meeting in 2013;
- subject to clauses 30.4–30.7.
- 66.4 The first Secretary of the company is Michael Spencer.
- 66.5 The Board must at its first meeting elect the office-bearers (other than the Secretary) from among the directors.
- 66.6 Under section 250N of the Corporations Act the company is not required to hold an annual general meeting in 2010, but may hold its first annual general meeting in 2011.

## PART 10 – INDEX

### 67. Index

“absolute majority” .....	cl.65.1(a) .....	p.14
Accounts .....	cl.54 .....	p.11
Amendment of Constitution .....	cl.60 .....	p.12
Annual General Meeting .....	cl.17 .....	p.5
Applications for Membership .....	cl.7 .....	p.3
Approval of Membership .....	cl.8 .....	p.3
“ASIC” .....	cl.65.1(b) .....	p.14
Audit .....	cl.55 .....	p.11
the Board		
Membership .....	cl.39 .....	p.9
Public Statements .....	cl.42 .....	p.9
Regulations .....	cl.41 .....	p.9
Responsibility and Powers .....	cl.40 .....	p.9
<i>see also</i> Directors		
Board Meetings		
Chairing .....	cl.47 .....	p.10
Convening .....	cl.43 .....	p.9
Disclosure of Interest .....	cl.49 .....	p.10
Leave of Absence .....	cl.50 .....	p.10
Minutes .....	cl.58 .....	p.11
Notice .....	cl.44 .....	p.9
Quorum .....	cl.46 .....	p.10
Resolutions without Meeting .....	cl.51 .....	p.10
Use of Technology .....	cl.45 .....	p.10
Voting .....	cl.48 .....	p.10
Cessation of Membership .....	cl.14 .....	p.4
Chair .....	cl.35.1(a) .....	p.8
" .....	cl.24.1 .....	p.6
" .....	cl.43.1 .....	p.9
" .....	cl.47.1 .....	p.10
Chairing		
of Board Meetings .....	cl.47 .....	p.10
of General Meetings .....	cl.24 .....	p.6
Cheques .....	<i>see</i> Payments	
Common Seal .....	cl.57 .....	p.11
“the company” .....	cl.65.1(c) .....	p.14
the Company		
Definition .....	cl.65.1(c) .....	p.14
Distribution of Surplus, etc .....	cl.5.1 .....	p.2
" .....	cl.61.1 .....	p.12
Legal Capacity .....	cl.4.1(a) .....	p.2
Name .....	cl.2 .....	p.2
Not For Profit .....	cl.5 .....	p.2
Object .....	cl.3 .....	p.2
Powers .....	cl.4 .....	p.2
Contents of Constitution .....	cl.1 .....	p.1
“convene” .....	cl.65.1(d) .....	p.14
Convening		
of Annual General Meeting .....	cl.17 .....	p.5
of Board Meetings .....	cl.43 .....	p.9
of Special General Meetings .....	cl.18 .....	p.5
Co-option of Directors .....	cl.29 .....	p.7
Definitions		
“absolute majority” .....	cl.65.1(a) .....	p.14
“ASIC” .....	cl.65.1(b) .....	p.14
“the company” .....	cl.65.1(c) .....	p.14
“convene” .....	cl.65.1(d) .....	p.14
Definitions <i>contd</i>		
“member” .....	cl.65.1(e) .....	p.14
“the regulations”, “regulation” .....	cl.65.1(f) .....	p.14
“special resolution” .....	cl.65.1(g) .....	p.14
“in writing” .....	cl.65.1(h) .....	p.14
Deputy Chair .....	cl.35.1(b) .....	p.8
" .....	cl.24.2 .....	p.6
" .....	cl.47.2 .....	p.10
Directors		
Co-option .....	cl.29 .....	p.7
Duties .....	cl.32 .....	p.8
Election .....	cl.28 .....	p.7
Indemnity .....	cl.34 .....	p.8
Notification to ASIC .....	cl.31 .....	p.8
Number and Type .....	cl.27 .....	p.7
Remuneration .....	cl.33 .....	p.8
Term of Office .....	cl.30 .....	p.7
Transitional .....	cl.66 .....	p.14
<i>see also</i> the Board, Board Meetings		
Disciplining of Members .....	cl.12 .....	p.4
Disclosure of Interest .....	cl.49 .....	p.10
Distribution of Surplus, etc .....	cl.5.1 .....	p.2
" .....	cl.61.1 .....	p.12
Duties of Directors .....	cl.32 .....	p.8
Election		
of Directors .....	cl.28 .....	p.7
of Office-Bearers .....	cl.36 .....	p.9
Eligibility for Membership .....	cl.6 .....	p.2
Expulsion of Members .....	cl.12 .....	p.4
Financial		
Accounts .....	cl.54 .....	p.11
Audit .....	cl.55 .....	p.11
Distribution of Surplus, etc .....	cl.5.1 .....	p.2
" .....	cl.61.1 .....	p.12
Financial Year .....	cl.53 .....	p.10
Not For Profit .....	cl.5 .....	p.2
Payments .....	cl.56 .....	p.11
to Members .....	cl.5 .....	p.2
Records .....	cl.59 .....	p.11
Remuneration of Directors .....	cl.33 .....	p.8
Sources of Funds .....	cl.52 .....	p.10
Tax Deductibility .....	cl.62 .....	p.12
Financial Records .....	<i>see</i> Accounts, <i>see also</i> Records	
Financial Year .....	cl.53 .....	p.10
General Meetings		
Annual General Meeting .....	cl.17 .....	p.5
Chairing .....	cl.24 .....	p.6
Minutes .....	cl.58 .....	p.11
Notice .....	cl.19 .....	p.5
Poll .....	cl.26 .....	p.7
Proxies .....	cl.21 .....	p.6
Quorum .....	cl.23 .....	p.6
Representatives .....	cl.20 .....	p.6
Special General Meetings .....	cl.18 .....	p.5
Use of Technology .....	cl.22 .....	p.6
Voting .....	cl.25 .....	p.6
Grievance Procedure .....	cl.16 .....	p.4
Indemnity .....	cl.34 .....	p.8
Index .....	cl.67 .....	p.15
Interpretation .....	cl.64 .....	p.14

Leave of Absence from Meetings ... cl.50.....	p.10	Public Fund.....	cl.62.....	p.12
Legal		Public Statements.....	cl.42.....	p.9
Amendment of Constitution .....	cl.60.....	Quorum		
Common Seal .....	cl.57.....	for Board Meetings.....	cl.46.....	p.10
Interpretation .....	cl.64.....	for General Meetings.....	cl.23.....	p.6
Minutes .....	cl.58.....	Records .....	cl.59.....	p.11
Notices .....	cl.63.....	<i>see also</i> Accounts		
Records .....	cl.59.....	Register of Members.....	cl.15.....	p.4
Replaceable Rules .....	cl.64.....	" .....	cl.8.3(b).....	p.3
Tax Deductibility.....	cl.62.....	" .....	cl.14.1.....	p.4
Winding Up .....	cl.61.....	" .....	cl.63.3.....	p.13
<i>see also</i> the Company, "special resolution"		"the regulations", "regulation" .....	cl.65.1(f).....	p.14
Legal Capacity of the Company .....	cl.4.1(a).....	Regulations .....	cl.41.....	p.9
Liability of Members .....	cl.11.....	Removal		
Meetings <i>see</i> Board Meetings, General Meetings		of Directors.....	cl.30.7.....	p.8
"member" .....	cl.65.1(e).....	of Members .....	cl.12.....	p.4
Membership of the Board .....	cl.39.....	of Office-Bearers.....	cl.37.4.....	p.9
Membership of the Company		Remuneration of Directors .....	cl.33.....	p.8
Applications.....	cl.7.....	Replaceable Rules.....	cl.64.....	p.14
Approval .....	cl.8.....	Representatives of Members.....	cl.20.....	p.6
Cessation .....	cl.14.....	Resignation		
Discipline.....	cl.12.....	of Directors.....	cl.30.5.....	p.8
Eligibility.....	cl.6.....	of Members .....	cl.13.....	p.4
Expulsion.....	cl.12.....	of Office-Bearers.....	cl.37.2.....	p.9
Grievance Procedure .....	cl.16.....	Resolutions without Meeting.....	cl.51.....	p.10
Liability .....	cl.11.....	Responsibility of the Board .....	cl.40.1.....	p.9
Payments to Members .....	cl.5.....	Rights of Members .....	cl.10.1,10.5.....	p.3
Register of Members .....	cl.15.....	Secretary .....	cl.38.....	p.9
Resignation.....	cl.13.....	" .....	cl.35.1(c).....	p.8
Rights and Obligations .....	cl.10.....	" .....	cl.43.1.....	p.9
Subscriptions .....	cl.9.....	Sources of Funds.....	cl.52.....	p.10
Suspension.....	cl.12.....	Special General Meetings .....	cl.18.....	p.5
Transitional.....	cl.66.1.....	"special resolution".....	cl.65.1(g).....	p.14
Minutes of Meetings .....	cl.58.....	Amendment of Constitution .....	cl.60.....	p.12
Name of the Company .....	cl.2.....	Winding Up .....	cl.61.....	p.12
Not For Profit Company .....	cl.5.....	Subscriptions.....	cl.9.....	p.3
Notice		Suspension of Members.....	cl.9.3.....	p.3
of Board Meetings .....	cl.44.....	" .....	cl.12.....	p.4
of General Meetings .....	cl.19.....	Tax Deductibility .....	cl.62.....	p.12
Notices .....	cl.63.....	Technology, Use of		
Notification to ASIC of Directors... cl.31.....	p.8	for Board Meetings.....	cl.45.....	p.10
Number and Type of Directors .....	cl.27.....	for General Meetings.....	cl.22.....	p.6
Object of the Company .....	cl.3.....	Term of Office		
Obligations of Members .....	cl.10.2-10.5.....	of Directors.....	cl.30.....	p.7
Office-Bearers		of Office-Bearers.....	cl.37.....	p.9
Election.....	cl.36.....	Transitional .....	cl.66.....	p.14
Indemnity.....	cl.34.....	Voting		
Positions .....	cl.35.....	at Board Meetings .....	cl.48.....	p.10
Term of Office.....	cl.37.....	at General Meetings .....	cl.25.....	p.6
Transitional.....	cl.66.4.....	Winding Up .....	cl.61.....	p.12
<i>see also</i> Chair, Deputy Chair & Secretary		"in writing" .....	cl.65.1(h).....	p.14
Payments .....	cl.56.....			
to Members.....	cl.5.....			
Poll at General Meetings.....	cl.26.....			
Powers				
of the Board .....	cl.40.2,40.3.....			
of the Company .....	cl.4.....			
Proxies				
at Board Meetings .....	cl.48.2.....			
at General Meetings.....	cl.21.....			