

Corporations Act

A Company Limited By Guarantee

Constitution

of

REEF CHECK FOUNDATION LIMITED

1. **NAME OF THE COMPANY**

The name of the Company is Reef Check Foundation Limited.

2. **LIABILITY OF MEMBERS**

The liability of the Members is limited by guarantee in accordance with clause 9 hereof.

3. **REPLACEABLE RULES**

The Replaceable Rules do not apply to the Company.

4. **DEFINITIONS**

In these Rules:-

"**Alternate Director**" means a person holding office as an alternate Director of the Company;

"**Appointor**" means a Director who appoints an Alternate Director;

"**Associate Director**" means a person admitted as such pursuant to Rule 23;

"**Board**" means the Board of Directors of the Company;

"**Business Day**" means a day upon which banks are ordinarily open for business in the Territory;

"**Company**" means Reef Check Foundation Limited;

"**Corporations Act**" means the Corporations Act or any other statutory modification, amendment or re-enactment of the Corporations Act for the time being in force;

"**Corporation**" means any body corporate formed or incorporated in or outside the Territory;

"**Director**" means a Director of the Company, and includes an Alternate Director and an Associate Director;

"**Member**" means a member of the company;

"**Office**" means the registered office of the Company;

"**Officer**" has the same meaning as in the Corporations Act;

"**Register**" means the register of Members kept under the Corporations Act;

"**Replaceable Rules**" means the Replaceable Rules under the Corporations Act;

"**Representative**" means a person appointed as such pursuant to these Rules;

"**Rules**" means these rules in this Constitution;

"**Seal**" means the common seal of the Company;

"**Secretary**" means the secretary for the time being of the Company, and if there are joint secretaries, any one or more of such joint secretaries;

"**Members Meetings**" means general meetings of the Company;

"**Territory**" means Queensland.

5. **INTERPRETATION**

5.1 **Interpretation**

In these Rules:-

- (a) headings are for convenience only and do not affect meaning;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing any gender include all other genders;
- (d) a reference to a person includes a corporation, a partnership, a body corporate, an unincorporated association and a statutory authority;

- (e) where any word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (f) a reference to a rule is to a rule in these Rules.

5.2 **Application of Corporations Act**

Except so far as a contrary intention appears:-

- (a) an expression used in a particular Part or Division of the Corporations Act which is given by any provision of that Part or Division a special meaning for the purpose of that Part or Division the same meaning as in that Part or Division; and
- (b) an expression which is given by any provision of the Corporations Act a general meaning has the same meaning in these Rules.

6. **OBJECTIVES**

The objectives for which the Company is established are to operate a non-profit company to participate in the Reef Check international program that works with communities, governments and businesses to scientifically monitor, restore and maintain coral reef health and to:-

- (a) promote education, training and research to enhance the education of the public about the coral reef crisis;
- (b) create a global network of volunteer teams trained in Reef Check's scientific methods who regularly monitor and report on reef health;
- (c) facilitate collaboration that produces ecologically sound and economically sustainable solutions;
- (d) stimulate local community action to protect remaining pristine reefs and rehabilitate damaged reefs worldwide;
- (e) disseminate the results of its activities through publications and other means;
- (f) co-operate with the United Nations and the organisations of the United Nations system, other international organisations concerned with ocean affairs, governments, foundations, industries and academic institutions as well as with other

organisations and individuals, for which appropriate mechanisms for liaison shall be established;

in and around the Indo-Pacific Region as well as undertake all that which is related to the foregoing in the wider sense.

- (g) receive donations for the furtherance of objective (a) to (f);
- (h) receive, manage, take and hold real and personal property, gift(s), grant(s), devise(s) or bequest(s) and to sell, or dispose of the same and to do each and everything necessary, suitable or proper for the accomplishment of any of the purposes herein enumerated, or which shall, at any time, appear conducive or expedient for the protection or benefit of this Corporation; to take and hold by gift, donation, grant, devise or otherwise any property, real, personal or mixed in Australia or any other country, on behalf of, or for the benefit of this Corporation, or any subsidiary interest thereof, and to manage, grant, convey, lease or otherwise dispose of the same, or any part thereof and to execute such trust, or trusts as may be confided to the Corporation; and
- (i) enter into, make and perform contracts of every kind for any lawful purpose with any person, firm or association, municipality, body politics, government agencies, corporations for scientific, educational, social, charitable purpose or rendering services, which do not contemplate the distribution of games, profits or dividends to the members of the Corporation.
- (j) establish and maintain a public fund to be called the "Reef Check Foundation Fund" for the specific propose of supporting the environmental object/purposes of Reef Check Foundation Limited. The fund is established to receive all gifts of money or property for this purpose and any money received because of such gifts must be credited to its bank account. The fund must not receive any other money or property into its account and it must comply with Sub-division 30-E of the Income Tax Assessment Act 1997.

7. PROHIBITION UPON DISTRIBUTION OF INCOME, PROFITS AND PROPERTY

7.1 Income profits and property to be applied towards objects

The income, profits and property of the Company shall be applied solely towards the promotion of the objects of the Company set out in clause 6.

7.2 Prohibition upon payment to members

The income, profits and property of the Company shall not be paid or distributed to any Member or director directly or indirectly by way of dividend, bonus or by way of profit, distribution upon winding up, or otherwise.

7.3 Payments in good faith

Nothing in Rules 7.1 or 7.2 shall prevent the payment in good faith of:-

- (a) remuneration to Officers in accordance with Rule 19;
- (b) remuneration to employees;
- (c) a payment to the Member for goods and services supplied in the usual course of business;
- (d) interest upon moneys lent to the Company by the Member at a rate that does not exceed the rate that the Company would have been charged by its bankers on a comparable loan.

7.4 Conduit Policy

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

8. AMENDMENT OF THIS CONSTITUTION

No amendment may be made to the Constitution, without a special resolution passed at a meeting of members.

9. MEMBERS GUARANTEE

9.1 This Rule applies if the Company is wound up while a Member is a Member of the Company or within one (1) year after the Member ceases to be a Member.

9.2 Each Member of the Company undertakes to contribute to an amount to the property of the Company for payment of:-

- (a) the debts and liabilities of the Company contracted or incurred before the time at which the Member ceased to be a Member; and
- (b) the costs, charges and expenses of winding up; and
- (c) for an adjustment of the rights of contributors among themselves.

9.3 The amount of the contribution from each Member under this Rule is limited to TEN DOLLARS (\$10.00).

10. MEMBERS

10.1 Members

The initial Members of the Company shall be:-

- Jocelyn Keryl Hill
- Dean Kevin Miller
- Andrew John Dunstan
- Matthew Curnock
- Chloe Helen Lucas
- Timothy David Prior

10.2 Number of Members

The number of Members of the Company is unlimited.

10.3 Eligibility of Members

The initial Members and such other persons as the Company admits to membership in accordance with its Constitution are Members of the Company.

10.4 Application for Membership

Application for membership must be made in writing to the Secretary.

10.5 Application for Membership

Applications for membership are determined by the Board, subject to Rule 10.3.

10.6 Voting

A Member has all the rights conferred on a member by these Rules including the right to attend and to vote at annual general and other general meetings of the Company.

10.7 Register of Members

- (a) A Register of Members of the Company must be kept in the office of the Company;
- (b) The Register of Members must show:-
 - (i) the names in full and addresses of all Members of the Company; and
 - (ii) the date of admission to and cessation of membership; and
 - (iii) such other information as the Board may from time to time determine.
- (c) Each Member must notify the Secretary in writing of any change in that Member's address within a period of one (1) month after the change.

10.8 Annual Subscription

A Member must pay the annual subscription determined from time to time by the Board.

10.9 Cessation of Membership

Every Member of the Company has the right at any time to resign from membership of the Company by giving written notice to the Secretary.

10.10 A Member ceases to be a Member:-

- (a) on the passing of a resolution in accordance with Rule 10.11;
- (b) upon the Member resigning; or

- (c) on liquidation or winding up of the Member except for purposes of reconstruction or amalgamation.

10.11 Termination of Membership

The Board may by Special Resolution of the Board terminate the membership of a Member if the Member:-

- (a) has wilfully refused or neglected to comply with the provisions of the Constitution of the Company; or
- (b) is guilty of any conduct which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the interest of the Company; or
- (c) has failed to provide new contact details, and has been non-contactable for more than six months (for which procedures for termination of membership do not apply).

10.12 Procedures for Termination of Membership

At least one (1) month before the meeting of the Board at which a resolution under this Rule is considered the Member must be given notice:-

- (a) of that meeting; and
- (b) of what is alleged against the Member; and
- (c) of the intended resolution; and
- (d) that the Member will at the meeting and before the voting on any such resolution have an opportunity of giving orally or in writing any explanation or response the Member may think fit.

11. MEMBERS MEETINGS

11.1 Convening of Members Meetings

- (a) The Board may convene a Members Meeting whenever it decides.
- (b) The Board must convene a Members Meeting on a requisition of the members in accordance with the Corporations Act.

11.2 Notice period

Subject to the Corporations Act relating to agreements for shorter notice, where it is proposed to pass a special resolution not less than 21 days' notice and in other cases not less than 14 days' notice of a Members Meeting must be given to the Member.

11.3 Contents of Notice

A notice of a Members Meeting must specify the place, day and hour of the meeting, and in the case of special business, the general nature of that business.

11.4 Failure to give notice

Subject to the Corporations Act, the accidental omission to give notice of any Members Meeting to or the non-receipt of that notice to the Member will not invalidate any resolution passed at that meeting.

11.5 Notice of adjourned meeting in certain circumstances only

- (a) Whenever a Members Meeting is adjourned for less than one month, no further notice of the time and place of the adjourned meeting need be given;
- (b) Whenever a Members Meeting is adjourned for one month or more, notice of the time and place of the adjourned meeting must be given to the Member.

11.6 Persons entitled to notice of Members Meeting

Notice of every Members Meeting of the Company must be given in a manner authorised by these Rules and in accordance with the Corporations Act to:-

- (a) the members;
- (b) every Director and Alternate Director; and
- (c) the auditors of the Company.

No other person is entitled to receive notices of Members Meetings.

11.7 Persons entitled to attend Members Meetings

- (a) The members, Directors, and Alternate Directors are entitled to attend Members Meetings of the Company.

- (b) The Company's auditor is entitled to attend Members Meetings of the Company.

11.8 Expulsion of persons from Members Meeting

The chairperson may require any person to leave and remain out of any Members Meeting who in the opinion of the chairperson is not complying with the chairperson's reasonable directions, and provided that a quorum remains, the Members Meeting may proceed and all resolutions shall be valid resolutions of the Company.

11.9 Postponement or Cancellation of Meeting

The Board may postpone or cancel any Members Meeting other than a meeting convened as a result of a requisition by the members.

12. PROCEEDINGS AT MEMBERS MEETINGS

12.1 Business of Annual General Meetings and Special Business

The business of the annual general meeting is:-

- (a) to receive and consider the financial and other reports required by the Corporations Act to be laid before each annual general meeting;
- (b) when relevant to appoint an auditor, and
- (c) to transact any other business which under these Rules or the Corporations Act is required to be transacted at an annual general meeting.

All other business transacted at an annual general meeting and all business transacted at other general meetings is deemed to be special.

12.2 Resolutions at Members Meetings

Except pursuant to the Corporations Act, with the prior approval of the Board, or with the permission of the chairperson, no person may, as regards any special business of which notice has been given, move at any Members Meeting any resolution (other than a resolution in the same terms as specified in that notice) or any amendment of a resolution.

12.3 Quorum

- (a) There shall be a quorum for a Members Meeting if there is present, in person or by proxy, at least two (2) members.
- (b) No business may be transacted at any Members Meeting unless a quorum is present at the commencement of the meeting.
- (c) If a quorum is present at the beginning of a Members Meeting it is deemed present throughout the meeting unless the chairperson otherwise declares.

12.4 If quorum absent

If half an hour after the time appointed for a Members Meeting a quorum is not present, the meeting will be adjourned to such other day, time and place as the Board may by notice to the members appoint, but failing such appointment, then to the same day in the next week at the same time and place as the meeting adjourned.

12.5 Chairperson

- (a) The chairperson of the Board or in the chairperson's absence the deputy chairperson, if any, will preside as chairperson at every Members Meeting of the Company.
- (b) If there is no such chairperson or deputy chairperson, or if at any Members Meeting neither the chairperson nor the deputy chairperson are present within 15 minutes of the time appointed for holding the meeting or willing to act, the Director or Directors present may choose another Director as chairperson.
- (c) If no Director is present or if all Directors present decline to take the chair, the members may appoint the chairperson.

12.6 Adjournment of Members Meetings

If so directed by the Members Meeting, the chairperson will adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

12.7 General Conduct of Meetings

- (a) The chairperson shall be responsible for the general conduct of Members Meetings and for the procedures to be adopted at Members Meetings.
- (b) The chairperson may make rulings, adjourn the meeting without putting the question (or any question) to the vote if such action is required to ensure the orderly conduct of the meeting.
- (c) The chairperson may require the adoption of any procedures which are in the chairpersons' opinion necessary or desirable for the proper and orderly casting or recording of votes at any Members Meeting of the Company, whether on a show of hands or on a poll.
- (d) The chairperson shall determine any dispute concerning the admission, validity or rejection of a vote. The chairperson's determination is final and conclusive.
- (e) Persons in possession of visual-recording, pictorial-recording or sound-recording devices or placards, banners or articles considered by the chairperson to be dangerous, offensive or liable to cause disruption, or persons who refuse to produce or to permit examination of any articles in their possession, may be refused admission to any Members Meeting or may be required to leave and remain out of the meeting.
- (f) Nothing in this Rule shall be taken to limit the powers conferred on the chairperson by law.

12.8 Written resolutions of members

- (a) If the members has signed a document containing a statement that it is in favour of a resolution in the terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Members held on the day on which the document was signed and at the time at which the document was signed by the members.

12.9 Company acting contrary to Rule 6

- (a) If a member believes that the Company proposes to pass a resolution, or has passed a resolution that is contrary to the objectives in Rule 6, the member may by written notice to the chairperson or the Secretary notify the Company that the member hold that belief.
- (b) If the Company receives a written notice pursuant to paragraph (a) and:
 - (i) the resolution the subject of the notice has not yet been passed, the Company must not proceed to pass the resolution otherwise than in accordance with this Rule; or
 - (ii) the resolution the subject of the notice has been passed, then upon the receipt of that notice the resolution shall be deemed to be rescinded, and the Company shall cease acting upon that rescinded resolution, otherwise than in accordance with this Rule.
- (c) If a member gives a written notice pursuant to paragraph (a) it must obtain a written opinion from its legal adviser as to whether the resolution is in fact contrary to the objectives in Rule 6, and must provide it to the Company within four weeks of the date of the meeting of the Company where the resolution was passed or proposed.
- (d) If the advice received by the Company pursuant to Rule 12.9(c) is that the resolution or proposed resolution is contrary to the objectives in Rule 6, the Company must not consider nor vote upon the resolution.
- (e) If:
 - (i) the advice received by the Company pursuant to Rule 12.9(c) is that the resolution or proposed resolution is not contrary to the objectives in Rule 6; or
 - (ii) the Company does not receive the advice in accordance with Rule 12.9(c), the Company may

proceed to call a Members' Meeting to reconsider the resolution or proposed resolution.

- (f) A resolution made pursuant to Rule 12.9(e) shall not be subject to Rule 12.9(a).
- (g) The Company may allow period of time for an advice that is greater than the period referred to in Rule 12.9(c).

13. VOTES AT MEMBERS MEETINGS

13.1 Number of votes

Subject to this Rule:

- (a) on a show of hands at a Members Meeting each member (whether present or by way of proxy or attorney) has one vote; and
- (b) on a poll at a Members Meeting each member (whether present or by way of proxy or attorney) has one vote.

13.2 Casting vote

The Chairperson of the meeting does not have a casting vote.

13.3 Chairperson to determine disputes regarding votes

In the case of any dispute as to the admission or rejection of a vote the chairperson shall determine the dispute and that determination is final and conclusive.

13.4 Objections to qualification to vote

- (a) No objection to the qualification of any person to vote will be raised except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at that meeting is valid for all purposes.
- (b) Any objection will be referred to the chairperson, whose decision is final and conclusive.

14. PROXIES AND REPRESENTATIVES

14.1 Right to appoint proxy or attorney

- (a) A member is entitled to appoint not more than two other persons (whether Members or not) as a member's proxy or

proxies or attorney or attorneys, as the case may be, to attend and vote instead of a member, at the meeting.

- (b) A proxy or attorney may be appointed for all meetings or for any number of meetings or for a particular purpose.

14.2 Proxy or attorney must be written

An instrument appointing a proxy or attorney:

- (a) must be in writing under the hand of the appointer or of the appointer's attorney who is duly authorised in writing or, if the appointer is a corporation, signed by a director or a secretary;
- (b) may contain directions as to the manner in which the proxy or attorney, as the case may be, is to vote in respect of any particular resolution or resolutions.

A facsimile of a written appointment of a proxy or a power of attorney is valid.

14.3 Chairperson decides validity

The chairperson's decision as to the validity of a proxy or power of attorney or a facsimile of either is final and conclusive.

14.4 Authority conferred on Proxy or Attorney

Unless otherwise provided in the instrument, an instrument appointing a proxy or attorney will be taken to confer authority:

- (a) to agree to a meeting being convened by shorter notice than is required by the Corporations Act or by these Rules;
- (b) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given;
- (c) even though the instrument may refer to specific resolutions and may direct the proxy or attorney how to vote on those resolutions:
 - (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and

- (ii) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting;
- (d) to speak on any proposed resolution on which the proxy or attorney may vote; and
- (e) to demand or join in demanding a poll on any resolution on which the proxy or attorney may vote.

14.5 Power of attorney and proxy form to be deposited before meeting

An instrument appointing an attorney or a proxy and the power of attorney or other authority under which it is signed or a copy of that power or authority certified as a true copy by statutory declaration or a facsimile of any of the documents referred to in this Rule, must be deposited at the Office not less than 48 hours before the time scheduled for commencement of the meeting (or any adjournment of that meeting) at which the person named in the instrument intends to vote.

14.6 Form of proxy or attorney

Every instrument appointing a proxy or attorney whether for a specified meeting or otherwise will be in such form as the Board may prescribe or accept.

14.7 Failure to name appointee

Any instrument of proxy in which the name of the appointee is not filled in will be deemed to be given in favour of the chairperson.

14.8 Appointment of Representative by Corporation

- (a) A member, by a resolution of its board, may authorise any person (whether a Member or not) to act as its Representative at all meetings or any particular meeting or meetings.
- (b) That person is entitled to exercise the same powers on behalf of the Member as the Member could exercise if it were a natural person who was a Member of the Company.

14.9 Proof of appointment or revocation of appointment of Representative

A certificate under the seal of a member or such other document as the chairperson of the meeting in the chairperson's sole discretion considers sufficient will be prima facie evidence of the appointment or of the revocation of the appointment of a Representative.

15. COMPOSITION OF BOARD

15.1 Composition

The composition of the Board shall be:-

- (a) the Chairperson, who is appointed in accordance with Rule 15.2; and
- (b) each person who is nominated by the members to be a Director of the Company,

who shall be the Directors of the Company.

15.2 Chairperson

- (a) The Board shall appoint a person to be the chairperson of the Board.
- (b) The chairperson shall be a Director of the Company, upon appointment.
- (c) The Board may determine the period for which a person elected as chairperson is to hold office.
- (d) If the Board does not make such a determination, the person shall hold office until otherwise resolved by the Board or until the person ceases to be a Director.
- (e) If the Board makes such a determination the person concerned shall hold office until the first to occur of:-
 - (i) the expiration of that period,
 - (ii) the person ceasing to be a Director, and
 - (iii) the Board at any time during that period resolving that the person shall from that time cease to hold that office.

15.3 Deputy Chairperson

- (a) The Board may appoint, from amongst its own membership, a person to act as deputy chairperson.

- (b) The Board may determine the period for which a person appointed as deputy chairperson is to hold office.
- (c) If the Board does not make such a determination, the person shall hold office until otherwise resolved by the Board or until the person ceases to be a Director.
- (d) If the Board makes such a determination the person concerned shall hold office until the first to occur of:-
 - (i) the expiration of that period;
 - (ii) the person ceasing to be a Director, and
 - (iii) the Board at any time during that period resolving that the person shall from that time cease to hold that office.

15.4 First Directors

The first Directors, being the persons referred to in clause 15.1 shall be:-

- (a) Jocelyn Keryl Hill
- (b) Dean Kevin Miller
- (c) Andrew John Dunstan

16. DIRECTORS

16.1 Limited ability of Directors to act during vacancies

The continuing Directors may act notwithstanding any vacancy in their number; but for as long as the number of Directors is below the minimum fixed by these Rules, the Directors will not act except for the purpose of filling vacancies or convening a Members Meeting of the Company.

16.2 Directors may attend and speak at Members Meetings

A Director is entitled to receive all notices to be served or given to Members, and is entitled to attend and speak at all Members Meetings.

16.3 Resignation

A Director may resign from the office by giving the Company notice in writing.

16.4 Vacation of office of Director

The office of a Director is vacated if that Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) is absent without the consent of the Board from three consecutive meetings of the Board and the Board resolves that the Director's office be vacated;
- (c) resigns;
- (d) is removed from office, or ceases to be a Director pursuant to these Rules, or the Corporations Act;
- (e) becomes bankrupt or suspends payment or liquidates by arrangement or compounds with or assigns the Director's estate for the benefit of the Director's creditors; or
- (f) becomes prohibited from being a Director by virtue of the Corporations Act;

17. DIRECTOR'S INSURANCE

To the extent permitted by the Corporations Act, the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Company or of a subsidiary of the Company against a liability:

- (a) incurred by the person in the person's capacity as an Officer of the Company or a subsidiary of the Company or in the course of acting in connection with the affairs of the Company or a subsidiary of the Company, or otherwise arising out of the Officer's holding such office, provided the liability does not arise out of conduct involving a willful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of the Corporations Act; and

- (b) for costs and expenses incurred by that person in defending legal proceedings.

18. POWERS OF COMPANY AND ITS DIRECTORS

18.1 Directors have powers of the Company

The management of the business and affairs of the Company is vested in the Board. The Board may exercise all powers and do all such acts and things which the Company is authorised or permitted to exercise and do, including deciding upon the Company's strategic direction, approving budgets, approving projects, appointing program leaders, and all other matters which are not by these Rules or by statute directed or required to be exercised or done by the Company in a Members Meeting.

18.2 Directors may exercise Company's power to borrow

The Board may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company, to give any other security for a debt, liability or obligation of the Company or of any other person, and to guarantee or to become liable for the payment of money or the performance of any obligations by any other person.

18.3 Directors may exercise power to give security

The Board may exercise the powers conferred on them by Rule 18.2 in such manner and upon terms and conditions in all respects as it decides.

18.4 Execution of Company cheques, etc.

All cheques, promissory notes, banker's drafts, bills of exchange and other negotiable instruments signed, drawn, accepted, endorsed or otherwise executed by the Company, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner and by such persons as the Board decides.

18.5 Board acting contrary to Rule 6

- (a) If any Director believes that the Board proposes to pass a resolution, or has passed a resolution that is contrary to the provisos in Rule 6, that Director may by written notice to the

chairperson or the Secretary notify the Company that the Director holds that belief.

- (b) If the Company receives a written notice pursuant to paragraph (a) and:
 - (i) the resolution the subject of the notice has not yet been passed, the Board must not proceed to pass the resolution otherwise than in accordance with this Rule; or
 - (ii) the resolution the subject of the notice has been passed, then upon the receipt of that notice the resolution shall be deemed to be rescinded, and the Company shall cease acting upon that rescinded resolution, otherwise than in accordance with this Rule;
- (c) A Director who gives a written notice pursuant to paragraph (a) must obtain a written opinion from the Director's legal adviser as to whether the resolution is in fact contrary to the provisos in Rule 6, and must provide it to the Company:-
 - (i) within four weeks of the date of the meeting of the Board where the resolution was passed or proposed; or
 - (ii) by the date of the next following meeting of the Board whichever is the longer.
- (d) If the advice received by the Company pursuant to Rule 18.5(c) is that the resolution or proposed resolution is contrary to the provisos in Rule 6, the Board must not consider nor vote upon the resolution.
- (e) If:-
 - (i) the advice received by the Company pursuant to Rule 18.5(c) is that the resolution or proposed resolution is not contrary to the provisos in Rule 6; or
 - (ii) the Company does not receive the advice in accordance with Rule 18.5(c),

the Board may proceed to vote upon the resolution.

- (f) A resolution made pursuant to Rule 18.5(e) shall not be subject to Rule 18.5(a).
- (g) The Board may allow period of time for an advice that is greater than the period referred to in Rule 18.5(c).

19. NO REMUNERATION TO DIRECTORS

19.1 No Remuneration to Directors

The Directors will not be paid any remuneration for acting as Directors of the Company.

19.2 Other Payments to Directors

The Directors must approve any other payments to any Director in accordance with section 150 of the Corporations Act.

20. DIRECTORS' CONTRACTS WITH COMPANY

20.1 Director may hold other office of profit

A Director may hold any other office or place of profit in the Company (except that of auditor) in conjunction with the office of Director, on such terms as the Board determines.

20.2 Contract not avoided when Director interested

Subject to the Corporations Act, no Director shall be disqualified from holding any office of profit under any corporation in which the Company shall be a shareholder or otherwise interested or from contracting with the Company either as vendor, purchaser or otherwise; nor shall any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way interested be avoided; nor shall any Director be liable to account to the Company for any profit arising from any such office or place of profit or realised by any such contract or arrangement by reason only of such Director holding that office; but the nature of the Director's interest must be disclosed by the Director.

20.3 When a Director may vote

Subject to the Corporations Act, a Director who has an interest in a matter that is being considered at a meeting of the Board, may,

despite that interest, vote, be present and be counted in a quorum at that meeting.

20.4 Director may affix Seal notwithstanding interest

Notwithstanding that a Director is interested in a contract or arrangement, that Director may be appointed as the Director to sign on behalf of the Company or in whose presence the Seal of the Company is to be affixed to any instrument to which the interest relates.

20.5 Record of disclosures by Directors

The Secretary shall record in the minutes any disclosure given by a Director.

21. PROCEEDINGS OF THE BOARD

21.1 Meetings of the Board

The Board shall meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.

21.2 Quorum for meetings of Directors

- (a) The quorum for the purpose of considering a matter at a meeting of the Board shall be one half of the number of persons comprising the members of Board, plus one but in no case shall a quorum be less than three (3) persons comprising members of the Board.
- (b) A meeting of the Board during which a quorum is present is competent to exercise all or any of the authorities, powers and discretions under these Rules for the time being vested in or exercisable by the Board.
- (c) Where a quorum cannot be established for a meeting of the Board (or consideration of a particular matter) a Director may convene a Members Meeting of Members to deal with the matter.

21.3 Convening meetings of Directors

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

21.4 Notice of meetings of the Board

- (a) Notice of every Board meeting will be given to each Director and Alternate Director who is in Australia. It is not necessary to give notice to any Director or Alternate Director who is not in Australia.
- (b) Notice of a meeting of the Board may be given in writing, by electronic mail, or by radio, telephone, closed-circuit television or other electronic means of audio or audio-visual communication.

21.5 Meetings by Electronic Means

- (a) Without limiting the discretion of the Board to regulate its meetings, the Board may, if it thinks fit, confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communication.
- (b) Notwithstanding that the Directors are not present together in one place at the time of the conference, a resolution passed at such a conference will be deemed to have been passed at a meeting of the Board held on the day on which and at the time at which the conference was held.
- (c) The provisions of these Rules relating to proceedings of the Board apply to such conferences to the extent that they are capable of applying, with any necessary changes the chairperson decides.
- (d) A Director present at the commencement of the conference will be conclusively presumed to have been present and, subject to other provisions of these Rules, to have formed part of the quorum throughout the conference.
- (e) Any minutes of a conference signed by the chairperson of that conference or by the chairperson of the next succeeding meeting of the Board will be sufficient evidence of the observance of all necessary formalities regarding the convening and conduct of the conference.
- (f) When by the operation of this Rule a resolution is deemed to have been passed at a meeting of the Board, that meeting will be deemed to have been held at such place as is determined by the chairperson of the conference, provided

that at least one of the Directors who took part in the conference was at such place for the duration of the conference.

21.6 Votes at meetings of Directors

- (a) Questions arising at any meeting of the Board will be decided by a majority of votes and each Director has one vote.
- (b) A person who is an Alternate Director is entitled to one vote (in addition to the Alternate Director's own vote as a Director, if any) on behalf of each Appointor whose alternate the Alternate Director is, and who is not present.

21.7 Casting vote for chairperson of Directors

In case of an equality of votes the chairperson of a meeting of the Board will have a second or casting vote.

21.8 Chair

If the chairperson or deputy chairperson is not present within 15 minutes from the time appointed for holding the meeting, the Directors present will choose one of their number to be chairperson of that meeting.

21.9 Committees of Directors

- (a) The Board may delegate any of its powers to committees consisting of one or more Directors, and the Board may from time to time revoke that delegation.
- (b) A committee will conform to any regulations that may be imposed upon it by the Board in the exercise of its powers.
- (c) So far as they are capable of application and with any necessary changes, the provisions of these Rules for regulating the meetings and proceedings of the Board govern the meetings and proceedings of committees of two or more members.
- (d) Where a committee consists of two or more members, a quorum will be any two members or such larger number as the committee determines.

21.10 Defects in appointment or qualifications of Director

All acts done at any meeting of the Board or of a committee of the Board or by any person acting as a Director will be as valid as if every such person or committee had been duly appointed and every Director was qualified and entitled to vote, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a Director or of the committee or of the person, or that any Director was disqualified or not entitled to vote.

21.11 Written resolutions of Directors

- (a) If all of the Directors required to be given notice of a meeting, being not less than the number of Directors required to constitute a quorum for a meeting of the Board, have signed a document containing a statement that they are in favour of a resolution of the Board in the terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Board held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document or documents on different days, on the day on which, and at the time at which the document was last signed by a Director.
- (b) For the purposes of this Rule:-
- (i) two or more separate documents containing statements in identical terms each of which is signed by one or more Directors will together be deemed to constitute one document containing a statement in those terms signed by the Directors;
 - (ii) a reference to all the Directors does not include a reference to a Director who, at a meeting of the Board, would not be entitled to vote on the resolution;
 - (iii) a document signed by an Alternate Director need not also be signed by the Alternate Director's Appointor and, if signed by a Director who has appointed an Alternate Director, need not be signed by the Alternate Director in that capacity; and

- (iv) any document so signed by a Director may be received by the Company at the Office (or other place agreed by the Board) by post, by facsimile or other electronic means or by being delivered personally by that Director.

22. ALTERNATE DIRECTORS

22.1 Appointment and removal of Alternate Directors

- (a) Each Director has power to appoint any person who is not an auditor of the Company or a partner or employer or employee of an auditor of the Company, approved for that purpose by the Board, to be the alternate of the Director in the Appointor's
 - (b) place during such times as the Appointor determines, and will have power at the Appointor's discretion to remove that Alternate Director.
 - (b) Subject to the Corporations Act, an Alternate Director is not prohibited from voting or being present in respect of a matter by reason only that the Alternate Director's Appointor is prohibited from voting or being present in respect of that matter.

22.2 Notice of appointment or removal of Alternate Directors

Any appointment or removal of an Alternate Director must be effected by notice in writing to the Company, and may be effected by a facsimile of that notice.

22.3 Rights and powers of Alternate Directors

Subject to the Corporations Act, an Alternate Director:

- (a) may act in the place of the Alternate Director's Appointor;
- (b) is entitled to attend and vote and be counted in determining a quorum at any meeting of the Board (notwithstanding any interest the Alternate Director may have in a matter for consideration by the Board) except while the Alternate Director's Appointor is present;

- (c) has all the rights and powers and is subject to the duties of the Alternate Director's Appointor;
- (d) is not entitled to be remunerated otherwise than out of the remuneration of the Appointor;
- (e) may be remunerated by the Company for special services which in the opinion of the Board are outside the scope of the ordinary duties of a Director; and
- (f) may act as an Alternate Director to more than one Director and is entitled to one vote in respect of each Appointor where the Appointor is not present.

22.4 Alternate Director is an Officer of Company

An Alternate Director is an Officer of the Company and will not be deemed to be the agent of the Alternate Director's Appointor.

22.5 Voting rights of Alternate Directors and Quorum

If an Alternate Director is already a Director of the Company, the Alternate Director is entitled to vote at meetings of the Board both on behalf of the Alternate Director's Appointor and separately as a Director, but for the purpose of determining whether a quorum is present will be counted only once.

22.6 Alternate goes when Appointor goes

If any Appointor ceases to be a Director, the Appointor's Alternate Director (if any) also ceases to be an Alternate Director.

23. ASSOCIATE DIRECTORS

23.1 Appointment and removal of Associate Directors

The Board may appoint any person to be an Associate Director and may revoke that appointment.

23.2 Duties and Remuneration of Associate Directors

The Board may determine and vary the powers, duties and remuneration of any person appointed as an Associate Director.

23.3 Attendance at Board Meetings

An Associate Director does not have any right to attend at any meeting of the Board except by the invitation of the Board.

23.4 Associate Directors and Quorum

If an Associate Director attends any Board meeting, the Associate Director will not be counted in a quorum and does not have the right to vote.

24. MINUTES

24.1 Minutes of all proceedings to be kept

The Board will cause minutes of all proceedings of Members Meetings and of the Board, including committees, to be duly entered in books kept for that purpose in accordance with the Corporations Act.

24.2 Minutes to be signed by chairperson

The Board will cause the minutes of all proceedings of Members Meetings and meetings of the Board, including meetings of committees of Board, to be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

24.3 Minutes to be presumed accurate

Where the minutes of proceedings of Members Meetings and meetings of the Board, including meetings of committees of Directors are signed, those minutes shall be presumed to be an accurate record of the relevant proceedings unless the contrary is proved.

24.4 Inspection of minutes of Members Meetings

Books containing the minutes of proceedings of Members Meetings will be open for inspection by any Member without charge.

25. SECRETARY

25.1 Appointment and removal of Secretary

A Secretary or Secretaries will be appointed by the Board in accordance with the Corporations Act for such term, at such

remuneration and on such conditions as it decides, and any Secretary so appointed may only be removed by the Board.

25.2 Acting Secretary

The Board may appoint a person as an acting Secretary or as a temporary substitute for a Secretary who for the purpose of these Rules will be deemed to be a Secretary.

25.3 First Secretary

The First Secretary being one of the persons referred to in clause 25.1 shall be Jocelyn Keryl Hill.

26. SEALS

26.1 Custody and use of Seal

- (a) The Board will provide a Seal for the Company and will provide for the safe custody of that Seal.
- (b) The Seal will only be used by the authority of the Board or of a committee of the Board authorised by the Board.
- (c) Every instrument to which the Seal is affixed, subject to any provisions contained in this Rule, will be signed by any Director or by the Secretary, or by some other person appointed by the Board for that purpose.

26.2 Effect of sealing

Any instrument bearing the Seal will be binding on the Company notwithstanding any irregularity in the authority of the Board in relation to that instrument.

27. ACCOUNTS

27.1 Company to keep

The Company will keep such accounting and other records of the business of the Company as it is required to keep by the Corporations Act.

27.2 Company to allow Member to inspect accounts

A Member may inspect the accounting records of the Company during the Company's usual business hours, upon providing reasonable notice to the Company.

27.3 Copy of accounts to be sent

If so required by the Corporations Act as it applies to the Company, a copy of every document which is required to be sent to Members by the Corporations Act will be sent to all persons entitled to receive notices of Members Meetings.

27.4 Accounts Conclusive

Every account of the Company when audited (if required by the Corporations Act) and sent to all persons which Rule 27.3 requires, will be conclusive except as regards any material error discovered in it within three months after being sent to those persons. Whenever any material error is discovered within that period the account shall be corrected and then it shall be conclusive.

28. AUDITOR

The auditors of the Company will be appointed and may be removed as provided in the Corporations Act. They will perform the duties and have the rights and powers conferred by the Corporations Act.

29. CONFIDENTIALITY**29.1 Company's records**

- (a) Subject to the Corporations Act, the Board will determine whether and to what extent, at what time and place or places, and under what conditions, the accounting records and other documents of the Company will be open to the inspection of Members.
- (b) Subject to the Corporations Act, a Member who is not a Director does not have the right, but may in the discretion of the Board be authorised to inspect or to require or receive any information, any record or document of the Company or any information respecting any detail of the Company's trading or business, or any matter which is or may be in the nature of a trade secret or confidential information.

29.2 Officers of Company not to disclose information

- (a) Every Director, manager, Secretary, auditor, trustee, member of a committee, accountant and other Officer must maintain in confidence all transactions and business of the Company.
- (b) If required by the Board, every such person must, before commencing that person's duties or employment or at any time afterwards, sign and deliver to the Company a confidentiality agreement in the form the Board reasonably requires.

30. NOTICES

30.1 Method of service of notices

A notice may be served by the Company on a Member and any other person receiving a notice under this Constitution by any of the following methods:

- (a) by serving it personally on the Member;
- (b) by leaving it at the Member's registered address;
- (c) by sending it by post in a prepaid letter, envelope or wrapper addressed to the member at the Member's registered address; or
- (d) by sending it by facsimile transmission to a facsimile number nominated by the Member for the purpose of serving notices on the Member.
- (e) by sending it by e-mail to the address nominated by the Member.

30.2 Notification of address or facsimile number

- (a) Each Member whose registered address is not in Australia may at any time notify in writing to the Company an address or facsimile number in Australia which will be deemed to be that Member's registered office or facsimile number for the purposes of this Constitution.
- (b) The Board will acknowledge receipt of all notifications of change of address.

30.3 Air-mail postage or facsimile transmission to overseas members

In relation to Members who have no registered address in Australia, all notices will be posted by air-mail, or sent by facsimile transmission or air courier.

30.4 Notice by advertisement

Any notice required or allowed to be given by the Company to the Members by advertisement will unless otherwise stipulated be sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

30.5 Time of service by post

Any notice sent by post, air-mail or air courier will be deemed to have been served on the day following that day on which the letter, envelope or wrapper containing the notice is posted or delivered to the air courier, and in proving service it will be sufficient to prove that the letter, envelope or wrapper containing the notice was properly addressed and put into the post office or other public postal receptacle or delivered to the air courier. A certificate in writing signed by any manager, Secretary or other Officer of the Company that the letter, envelope or wrapper containing the notice was so addressed and posted is conclusive evidence of that fact.

30.6 Time of service by facsimile transmission

Any notice sent by facsimile transmission will be deemed to have been served on receipt by the company of a transmission report confirming successful transmission.

30.7 Service when member dead or bankrupt

- (a) Any notice or document sent by post to or left at the registered address of a Member will notwithstanding that the Member is then insolvent, and whether or not the Company has notice of that insolvency, be deemed to have been duly served.
- (b) Service will for all purposes of these Rules be deemed a sufficient service of that notice on the Member's administrators.

30.8 Signatures on notices

The signature to any notice to be given by the Company may be written or printed or a facsimile of that signature may be affixed by mechanical or other means.

30.9 Calculation of notice period

Where a period of notice is required to be given, the day on which the notice is dispatched and the day of doing the act or other thing shall not be included in the number of days or other period.

31. WINDING UP

31.1 Intellectual Property and Confidential Information upon Winding Up

Upon the winding up of the Company, after the payment of all the liabilities of the Company, the intellectual property and confidential information:

- (a) shall not be distributed:
- (b) shall be paid or transferred to any other organisation, whether incorporated or unincorporated, having similar objects to the Company and which is exempt from tax and that is on the Register of Environmental Organisations
 - (i) which the Members have by special resolution decided; or
 - (ii) which is determined by the Supreme Court of Queensland on the application of the Company or the Members.

31.2 Surplus Assets upon Winding Up

Upon the winding up of the Company, after the payment of all the liabilities of the Company, the surplus assets:

- (a) shall not be distributed:
- (b) shall be paid or transferred to any another organisation, whether incorporated or unincorporated, having similar objects to the Company and which is exempt from tax and that is on the Register of Environmental Organisations

- (i) which the members by special resolution decided; or
- (ii) which is determined by the Supreme Court of Queensland on the application of the Company or the members.

32. THE REEF CHECK FOUNDATION FUND

32.1 Requirements of the Public Fund

The Company must inform the Department responsible for the Environment as soon as possible if:

- (a) it changes its name or the name of its Public Fund; or
- (b) there is any change to the membership of the management committee of the Public Fund; or
- (c) there has been any departure from the model rules of the Public Fund set out in the Guidelines to the Register of Environmental Organisations.

32.2 Ministerial Rules

The Company agrees to comply with any rules that the Treasurer and the Minister with responsibility for the Environment may make to ensure that gifts made to the fund are only used for its principal purpose.

32.3 Statistical Information

Statistical information requested by the Department on donations to the Public Fund will be provided within four (4) months of the end of the financial year. An audited financial statement for the Company and its Public Fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of Public Fund moneys and the management of Public Fund assets.

32.4 Model Rules for the Public Fund

- (a) The objective of the fund is to support the Company's environmental purposes.
- (b) Members of the public are to be invited to make gifts of money or property to the fund for the environmental purposes of the organisation.

- (c) Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the fund.
- (d) A separate bank account is to be opened to deposit money donated to the fund, including interest accruing thereon, and gifts to it are to be kept separate from other funds of the organisation.
- (e) Receipts are to be issued in the name of the fund and proper accounting records and procedures are to be kept and used for the fund.
- (f) The fund will be operated on a “not for profit” basis.
- (g) A committee of management of no fewer than three (3) persons will administer the fund.
- (h) The committee will be appointed by the Company. A majority of the members of the committee are required to be “responsible persons” as defined by the Guidelines to the Register of Environmental Organisations.
- (i) In case of the winding-up of the Fund, any surplus assets are to be transferred to another fund with similar objectives that is on the Register of Environmental Organisations.

Amended at a General Meeting of the Members held at Townsville on 4th day of October 2013.

Certified a true copy by KRYSTAL LOUISE STUBBS, Secretary

KRYSTAL LOUISE STUBBS
20 October 2013

TABLE OF RULES

- 1. NAME OF THE COMPANY**
- 2. LIABILITY OF MEMBERS**
- 3. REPLACEABLE RULES**
- 4. DEFINITIONS**
- 5. INTERPRETATION**
 - 5.1 Interpretation
 - 5.2 Application of Corporations Act
- 6. OBJECTIVES**
- 7. PROHIBITION UPON DISTRIBUTION OF INCOME, PROFITS AND PROPERTY**
 - 7.1 Income profits and property to be applied towards objects
 - 7.2 Prohibition upon payment to members
 - 7.3 Payments in good faith
 - 7.4 Conduit policy
- 8. AMENDMENT OF THIS CONSTITUTION**
- 9. MEMBERS GUARANTEE**
- 10. MEMBERS**
 - 10.1 Members
 - 10.2 Number of Members
 - 10.3 Eligibility of Members
 - 10.4 Application for Membership
 - 10.5 Application for Membership
 - 10.6 Voting
 - 10.7 Register of Members
 - 10.8 Annual Subscription
 - 10.9 Cessation of Membership
 - 10.10 A Member ceases to be a Member
 - 10.11 Termination of Membership
 - 10.12 Procedures for Termination of Membership
- 11. MEMBERS MEETINGS**
 - 11.1 Convening of members meetings
 - 11.2 Notice period
 - 11.3 Contents of notice
 - 11.4 Failure to give notice
 - 11.5 Notice of adjourned meeting in certain circumstances only

- 11.6 Persons entitled to notice of members meeting
- 11.7 Persons entitled to attend members meetings
- 11.8 Expulsion of persons from members meeting
- 11.9 Postponement or cancellation of meeting

12. PROCEEDINGS AT MEMBERS MEETINGS

- 12.1 Business of annual general meetings and special business
- 12.2 Resolutions at members meetings
- 12.3 Quorum
- 12.4 If quorum absent
- 12.5 Chairperson
- 12.6 Adjournment of members meetings
- 12.7 General conduct of meetings
- 12.8 Written resolutions of members
- 12.9 Company acting contrary to Rule 6

13. VOTES AT MEMBERS MEETINGS

- 13.1 Number of votes
- 13.2 Casting vote
- 13.3 Chairperson to determine disputes regarding votes
- 13.4 Objections to qualification to vote

14. PROXIES AND REPRESENTATIVES

- 14.1 Right to appoint proxy or attorney
- 14.2 Proxy or attorney must be written
- 14.3 Chairperson decides validity
- 14.4 Authority conferred on proxy or attorney
- 14.5 Power of attorney and proxy form to be deposited before meeting
- 14.6 Form of proxy or attorney
- 14.7 Failure to name appointee
- 14.8 Appointment of representative by corporation
- 14.9 Proof of appointment or revocation of appointment of representative

15. COMPOSITION OF BOARD

- 15.1 Composition
- 15.2 Chairperson
- 15.3 Deputy chairperson
- 15.4 First directors

16. DIRECTORS

- 16.1 Limited ability of directors to act during vacancies
- 16.2 Directors may attend and speak at members meetings
- 16.3 Resignation
- 16.4 Vacation of office of director

17. DIRECTOR'S INSURANCE

18. POWERS OF COMPANY AND ITS DIRECTORS

- 18.1 Directors have powers of the company
- 18.2 Directors may exercise company's power to borrow
- 18.3 Directors may exercise power to give security
- 18.4 Execution of company cheques, etc
- 18.5 Board acting contrary to Rule 6

19. NO REMUNERATION TO DIRECTORS

- 19.1 No remuneration to directors
- 19.2 Other payments to directors

20. DIRECTORS' CONTRACTS WITH COMPANY

- 20.1 Director may hold other office of profit
- 20.2 Contract not avoided when director interested
- 20.3 When a director may vote
- 20.4 Director may affix seal notwithstanding interest
- 20.5 Record of disclosures by directors

21. PROCEEDINGS OF THE BOARD

- 21.1 Meetings of the board
- 21.2 Quorum for meetings of directors
- 21.3 Convening meetings of directors
- 21.4 Notice of meetings of the board.
- 21.5 Meetings by electronic means
- 21.6 Votes at meetings of directors
- 21.7 Casting vote for chairperson of directors
- 21.8 Chair
- 21.9 Committees of directors
- 21.10 Defects in appointment or qualifications of director
- 21.11 Written resolutions of directors

22. ALTERNATE DIRECTORS

- 22.1 Appointment and removal of alternate directors

- 22.2 Notice of appointment or removal of alternate directors
- 22.3 Rights and powers of alternate directors
- 22.4 Alternate director is an officer of company
- 22.5 Voting rights of alternate directors and quorum
- 22.6 Alternate goes when appointor goes

23. ASSOCIATE DIRECTORS

- 23.1 Appointment and removal of associate directors
- 23.2 Duties and remuneration of associate directors
- 23.3 Attendance at board meetings
- 23.4 Associate directors and quorum

24. MINUTES

- 24.1 Minutes of all proceedings to be kept
- 24.2 Minutes to be signed by chairperson
- 24.3 Minutes to be presumed accurate
- 24.4 Inspection of minutes of members meetings

25. SECRETARY

- 25.1 Appointment and removal of secretary
- 25.2 Acting secretary
- 25.3 First secretary

26. SEALS

- 26.1 Custody and use of seal
- 26.2 Effect of sealing

27. ACCOUNTS

- 27.1 Company to keep
- 27.2 Company to allow members to inspect accounts
- 27.3 Copy of accounts to be sent
- 27.4 Accounts conclusive

28. AUDITOR

29. CONFIDENTIALITY

- 29.1 Company's records
- 29.2 Officers of company not to disclose information

30. NOTICES

- 30.1 Method of service of notices
- 30.2 Notification of address or facsimile number
- 30.3 Air-mail postage or facsimile transmission to overseas members

- 30.4 Notice by advertisement
- 30.5 Time of service by post
- 30.6 Time of service by facsimile transmission
- 30.7 Service when member dead or bankrupt
- 30.8 Signatures on notices
- 30.9 Calculation of notice period

31. WINDING UP

- 31.1 Intellectual property and confidential information upon winding up
- 31.2 Surplus assets upon winding up

32. THE REEF CHECK FOUNDATION FUND

- 32.1 Requirements of the Fund
- 32.2 Administerial Rules
- 32.3 Statistical Information
- 32.4 Model Rules of the Public Fund

Reef Check Foundation Limited

Constitution (As amended on 4 October 2013)



connollysuthers

L A W Y E R S

AMP BUILDING
416 FLINDERS MALL
TOWNSVILLE QLD 4810

P.O. Box 991
TOWNSVILLE QLD 4810

DX: 41405

telephone

(07) 4771 5664

facsimile

(07) 4772 5742

email

law@connollysuthers.com.au

Constitution/Company

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Reef Check Foundation Limited
Constitution