



North Coast Regional  
**BOTANIC  
GARDEN**  
Coffs Harbour

# **CONSTITUTION**

## **THE FRIENDS OF THE NORTH COAST REGIONAL BOTANIC GARDEN Inc.**

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# Part 1 Preliminary

## 1 Definitions

(1) In this constitution:

**council** means the Coffs Harbour City Council.

**curator/operations manager** means the curator/operations manager of the North Coast Regional Botanic Garden.

**executive** means any 4 of the office bearers of the association's Committee.

**ordinary committee member** means a member of the Committee who is not an office-bearer.

**secretary** means:

- (a) the person holding office under this constitution as Secretary of the association, or
- (b) if no such person holds that office - the Public Officer of the association.

**public officer** means the member appointed by the Committee to act in this position in order to meet the requirements of the *Associations Incorporation Act 2009*.

**special general meeting** means a General meeting of the association other than an Annual General Meeting.

**the Act** means the *Associations Incorporation Act 2009*.

**the Regulation** means the *Associations Incorporation Regulation 2016*.

(2) In this constitution:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

(3) The provisions of the *Interpretation Act 1987* apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act.

(4) The name of the association shall be "The Friends of the North Coast Regional Botanic Garden Incorporated" (referred to in the rules as "The Association").

## **2 Aim**

The Association's aim is to develop and promote the North Coast Regional Botanic Garden through conservation, education and community enrichment.

## **3 Objects**

- (1) To publicise, promote, stimulate interest in, and foster community awareness of the North Coast Regional Botanic Garden.
- (2) To carry out works in the Botanic Garden.
- (3) To operate, manage and staff the Garden Information Centre/Shop, Garden Café, Plant Propagation/Sales and Rentals (Display room and Cottage) in the Botanic Garden.
- (4) To provide educational facilities and guides for visitors to the Botanic Garden.
- (5) To maintain a Seed Bank and make seeds held available for distribution to other Botanic Gardens, Universities, and similar organisations world-wide.
- (6) To maintain an Herbarium to assist in increasing our knowledge of Australian plants and as far as possible provide a plant identification service to the local community.
- (7) To raise funds to assist in achieving the stated objectives.
- (8) Carry out such other activities that may arise from time to time to assist in the development and maintenance of the Botanic Garden.
- (9) Work in partnership with the council.

## **Part 2 Membership**

### **4 Membership generally**

- (1) A person is eligible to be a member of the Association if:
  - (a) the person is a natural person, and
  - (b) the person has applied and been approved for membership of the Association in accordance with clause 5.
- (2) A person is taken to be a member of the Association if:
  - (a) the person is a natural person, and
  - (b) the person was:
    - (i) in the case of an unincorporated body that is registered as the Association - a member of that unincorporated body immediately before the registration of the Association, or
    - (ii) in the case of an association that is amalgamated to form the relevant Association - a member of that other association immediately before the amalgamation, or
    - (iii) in the case of a registrable corporation that is registered as an association - a member of the registrable corporation immediately before that entity was registered as an association.
- (3) A person is taken to be a member of the Association if the person was one of the individuals on whose behalf an application for registration of the association under section 6 (1) (a) of the Act was made.
- (4) An organisation or body corporate is eligible to be a member of the Association if it has applied and been approved for membership of the Association in accordance with clause 5.
- (5) A person who is a member of the Association and has shown exceptional and meritorious service, shall be eligible for Life Membership if the person:
  - (a) is nominated in writing by a Committee member. The nomination must address the criteria:
    - (i) length of service,
    - (ii) active membership,
    - (iii) level of service, and
    - (iv) merit
  - (b) is accepted as a Life Member by resolution of the Committee.

### **5 Application for membership**

- (1) An application by a person, organisation or body corporate for membership of the Association:
  - (a) must be made in writing (including by email or other electronic means, if the committee so determines) in the form determined by the Committee, and

- (b) must be lodged (including by electronic means, if the Committee so determines) with the Secretary of the Association, and
  - (c) must include the sum payable under clause 10.1 at the time of application.
- (2) As soon as practicable after receiving an application for membership, the Secretary must refer the application to the Committee, which is to determine whether to approve or to reject the application.
  - (3) As soon as practicable after the Committee makes that determination, the Secretary must:
    - (a) notify the applicant in writing (including by email or other electronic means, if the Committee so determines) that the Committee approved or rejected the application (whichever is applicable), and
    - (b) If the Committee does not approve the application, refund all monies paid by the applicant as soon as practicable.
  - (4) After approval of the application and payment of all monies paid under clause 10.1, the Secretary must, enter or cause to be entered the applicant's name in the Register of Members and, on the name being so entered, the applicant becomes a member of the Association.

## **6 Cessation of membership**

A person or organisation, body corporate ceases to be a member of the Association if the person, organisation or body corporate:

- (a) dies, or ceases to exist, or
- (b) resigns membership, or
- (c) is expelled from the Association, or
- (d) fails to pay the annual membership fee under clause 10.2 within 3 months after the fee is due.

## **7 Membership entitlements not transferable**

A right, privilege or obligation which a person, organisation or body corporate has by reason of being a member of the Association:

- (a) is not capable of being transferred or transmitted to another person, organisation or body corporate, and
- (b) terminates on cessation of the membership of the person, organisation or body corporate.

## **8 Resignation of membership**

- (1) A member of the Association may resign from membership of the Association by first giving to the Secretary written notice of at least one month (or any other period that the Committee may determine) of the member's intention to resign and, on the expiration of the period of notice, the member ceases to be a member.
- (2) If a member of the Association ceases to be a member under subclause (1), and in every other case where a member ceases to hold membership,

the Secretary must make an appropriate entry in the register of members recording the date on which the member ceased to be a member.

## **9 Register of members**

- (1) The Secretary must establish and maintain a Register of Members of the Association (whether in written or electronic form) specifying the name and postal, residential or email address of each person, organisation or body corporate who is a member of the Association together with the date on which membership commenced.
- (2) The Register of Members must be kept in New South Wales:
  - (a) at the main premises of the Association, or
  - (b) if the association has no premises, at the Association's official address.
- (3) The Register of Members must be open for inspection, free of charge, by any member of the Association at any reasonable hour.
- (4) A member of the Association may obtain a copy of any part of the Register on payment of a fee of not more than \$1 for each page copied.
- (5) If a member requests that any information contained on the Register about the member (other than the member's name) not be available for inspection, that information must not be made available for inspection.
- (6) A member must not use information about a person, organisation or body corporate obtained from the Register to contact or send material to the person, organisation or body corporate other than for:
  - (a) the purposes of sending the person, organisation or body corporate a newsletter, a notice in respect of a meeting or other event relating to the Association or other material relating to the Association, or
  - (b) any other purpose necessary to comply with a requirement of the Act or the Regulation.
- (7) If the Register of Members is kept in electronic form:
  - (a) it must be convertible into hard copy, and
  - (b) the requirements in subclauses (2) and (3) apply as if a reference to the Register of Members is a reference to a current hard copy of the Register of Members.

## **10 Fees and subscriptions**

- (1) A member of the Association must, on application for membership, pay to the Association a fee determined by the Committee.
- (2) In addition to the fee under subclause (1), a member of the Association must pay to the Association an annual subscription as determined by the Committee. The amount payable:
  - (a) shall fall due on the first day of each financial year of the Association. The financial year of the Association is 1<sup>st</sup> July – 30<sup>th</sup> June.
  - (b) if a member joins after March 31st of the then current financial year, they shall have their subscription carry through to the last day of the following financial year.

- (3) Categories of membership shall be:
  - (a) individual,
  - (b) family - including two adults and any children under eighteen years,
  - (c) junior - under eighteen years,
  - (d) concession card holder,
  - (e) organisation or body corporate,
  - (f) life member,
  - (g) other categories as determined by the Committee.

## **11 Members' liabilities**

The liability of a member of the Association to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of the winding up of the Association is limited to the amount, if any, unpaid by the member in respect of membership of the Association as required by clause 10.

## **12 Resolution of disputes**

- (1) A dispute between a member and another member or a member and a group of members (in their capacity as members) of the Association shall be managed following the procedures:
  - (a) informal action will initially be used to resolve the dispute. Two members of the Executive will hold separate informal discussion with each party.
  - (b) if the informal discussion fails to resolve the dispute both parties will be asked to put their dispute or issue in writing and forward it to the Committee Executive.
  - (c) the Committee Executive will meet to resolve the dispute.
- (2) If still unresolved, or a member in dispute at any stage so decides, the dispute will be:
  - (a) referred to a Community Justice Centre for mediation under the *Community Justice Centres Act 1983*.
  - (b) if a dispute is not resolved by mediation within 3 months of the referral to a Community Justice Centre, the dispute is to be referred to arbitration.
  - (c) the *Commercial Arbitration Act 2010* applies to a dispute referred to arbitration.

## **13 Disciplining of members**

- (1) A complaint may be made to the Committee by any person that a member of the Association:
  - (a) has refused or neglected to comply with a provision or provisions of this constitution, or



- (b) has wilfully acted in a manner prejudicial to the interests of the Association.
- (2) The Committee may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (3) If the Committee decides to deal with the complaint, the Committee:
  - (a) must cause notice of the complaint to be served on the member concerned, and
  - (b) must give the member at least 14 days from the time the notice is served within which to make submissions to the Committee in connection with the complaint, and
  - (c) must take into consideration any submissions made by the member in connection with the complaint.
- (4) The Committee may, by resolution, expel the member from the Association or suspend the member from membership of the Association if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.
- (5) If the Committee expels or suspends a member, the Secretary must, within 7 days after the action is taken, cause written notice to be given to the member of the action taken, of the reasons given by the Committee for having taken that action and of the member's right of appeal under clause 14.
- (6) The expulsion or suspension does not take effect:
  - (a) until the expiration of the period within which the member is entitled to appeal against the resolution concerned, or
  - (b) if within that period the member exercises the right of appeal, unless and until the Association confirms the resolution under clause 14, whichever is the later.

## **14 Right of appeal of disciplined member**

- (1) A member may appeal to the Association in general meeting against a resolution of the Committee under clause 13, within 7 days after notice of the resolution is served on the member, by lodging with the Secretary a notice to that effect.
- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) On receipt of a notice from a member under subclause (1), the Secretary must notify the Committee, which is to convene a General Meeting of the Association to be held within 28 days after the date on which the Secretary received the notice.
- (4) At a General Meeting of the Association convened under subclause (3):
  - (a) no business other than the question of the appeal is to be transacted, and
  - (b) the Committee and the member must be given the opportunity to state their respective cases orally or in writing, or both, and

- (c) the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (5) The appeal is to be determined by a simple majority of votes cast by members of the Association.

## **Part 3 The Committee**

### **15 Powers of the Committee**

Subject to the Act, the Regulation, this constitution and any resolution passed by the Association in general meeting, the Committee:

- (a) is to control and manage the affairs of the Association, and
- (b) may exercise all the functions that may be exercised by the Association, other than those functions that are required by this constitution to be exercised by a General Meeting of members of the Association, and
- (c) has power to perform all the acts and do all things that appear to the Committee to be necessary or desirable for the proper management of the affairs of the Association.

### **16 Composition and membership of Committee**

- (1) The Committee is to consist of:
  - (a) 6 office-bearers of the Association, and
  - (b) 4 ordinary Committee members,each of whom is to be elected at the Annual General Meeting of the Association under clause 17.
- (2) The Curator/Operations Manager of the North Coast Regional Botanic Garden is a non-voting ex-officio member of the Committee.
- (3) The office-bearers of the Association are as follows:
  - (a) the President,
  - (b) the Vice-President,
  - (c) the Treasurer,
  - (d) the Secretary,
  - (e) the Assistant Treasurer,
  - (f) the Assistant Secretary.
- (4) The Committee Executive is to consist of any 4 of the of the office-bearers of the Committee.
- (5) A Committee member may hold up to 2 offices (other than both the offices of President and Vice-President).
- (6) There is no maximum number of consecutive terms for which a Committee member may hold office.
- (7) Each member of the Committee is, subject to this constitution, to hold office until immediately before the election of Committee members at the Annual General Meeting next following the date of the member's election, and is eligible for re-election.

### **17 Election of Committee members**

- (1) Nominations of candidates for election as office-bearers of the Association, executive members or as ordinary Committee members:

- (a) must be made in writing, signed by 2 members of the Association and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination), and
  - (b) must be delivered to the Secretary of the Association at least 7 days before the date fixed for the holding of the Annual General Meeting at which the election is to take place.
- (2) If insufficient nominations are received to fill all vacancies on the Committee, the candidates nominated are taken to be elected and further nominations are to be received at the Annual General Meeting.
  - (3) If insufficient further nominations are received, any vacant positions remaining on the Committee are taken to be casual vacancies.
  - (4) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
  - (5) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
  - (6) The ballot for the election of office-bearers, Committee executive and ordinary Committee members of the Committee is to be conducted at the Annual General Meeting in any usual and proper manner that the Committee directs.
  - (7) A person nominated as a candidate for election as an office-bearer, executive member or as an ordinary Committee member of the Association must be a member of the Association.

## **18 Secretary**

- (1) The Secretary of the Association must, as soon as practicable after being appointed as Secretary, lodge notice with the Association of his or her address.
- (2) It is the duty of the Secretary to keep minutes (whether in written or electronic form) of:
  - (a) all appointments of office-bearers and members of the Committee, and
  - (b) the names of members of the Committee present at a Committee meeting or a General Meeting, and
  - (c) all proceedings at Committee Meetings and General Meetings.
- (3) Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.
- (4) The signature of the chairperson may be transmitted by electronic means for the purposes of subclause (3).
- (5) The Secretary must maintain or ensure the Register of Members is maintained.

## **19 Treasurer**

It is the duty of the Treasurer of the Association to ensure:

- (a) that all money due to the Association is collected and received and that all payments authorised by the Association are made, and

- (b) that correct books and accounts are kept showing the financial affairs of the Association, including full details of all receipts and expenditure connected with the activities of the Association.

## **20 Casual vacancies**

- (1) In the event of a casual vacancy occurring in the membership of the Committee, the Committee may appoint a member of the Association to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the Annual General Meeting next following the date of the appointment.
- (2) A casual vacancy in the office of a member of the Committee occurs if the member:
  - (a) dies, or
  - (b) ceases to be a member of the Association, or
  - (c) is or becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (d) resigns office by notice in writing given to the Secretary, or
  - (e) is removed from office under clause 21, or
  - (f) becomes a mentally incapacitated person, or
  - (g) is absent without the consent of the Committee from 3 consecutive meetings of the Committee, or
  - (h) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months, or
  - (i) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the *Corporations Act 2001* of the Commonwealth.

## **21 Removal of Committee members**

- (1) The Association in a General Meeting may by resolution remove any member of the Committee from the office of member before the expiration of the member's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.
- (2) If a member of the Committee to whom a proposed resolution referred to in subclause (1) relates makes representations in writing to the Secretary or President (not exceeding a reasonable length) and requests that the representations be notified to the members of the Association, the Secretary or the President may send a copy of the representations to each member of the Association or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

## **22 Committee Meetings and quorum**

- (1) The Committee must meet at least 3 times in each period of 12 months at the place and time that the Committee may determine.

- (2) Additional meetings of the Committee may be convened by the President or by any member of the Committee.
- (3) Oral or written notice of a meeting of the Committee must be given by the Secretary to each member of the Committee at least 48 hours (or any other period that may be unanimously agreed on by the members of the committee) before the time appointed for the holding of the meeting.
- (4) Notice of a meeting given under subclause (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the Committee members present at the meeting unanimously agree to treat as urgent business.
- (5) Any 4 members of the Committee constitute a quorum for the transaction of the business of a meeting of the Committee.
- (6) No business is to be transacted by the Committee unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- (7) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (8) At a meeting of the Committee:
  - (a) the President or, in the President's absence, the Vice-President is to preside, or
  - (b) if the President and the Vice-President are absent or unwilling to act, one of the remaining members of the Committee chosen by the members present at the meeting is to preside.

## **23 Appointment of Association members as Committee members to constitute quorum**

- (1) If at any time the number of Committee members is less than the number required to constitute a quorum for a Committee meeting, the existing Committee members may appoint a sufficient number of members of the association as Committee members to enable the quorum to be constituted.
- (2) A member of the Committee so appointed is to hold office, subject to this constitution, until the Annual General Meeting next following the date of the appointment.
- (3) This clause does not apply to the filling of a casual vacancy to which clause 20 applies.

## **24 Use of technology at Committee meetings**

- (1) A Committee meeting may be held at 2 or more venues using any technology approved by the Committee that gives each of the Committee's members a reasonable opportunity to participate.
- (2) A Committee member who participates in a Committee meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

## **25 Delegation by Committee to Sub-Committee**

- (1) The Committee may, by instrument in writing, delegate to one or more Sub-Committees (consisting of the member or members of the Association that the Committee thinks fit) the exercise of any of the functions of the Committee that are specified in the instrument, other than:
  - (a) this power of delegation, and
  - (b) a function which is a duty imposed on the Committee by the Act or by any other law.
- (2) A function the exercise of which has been delegated to a Sub-Committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the Sub-Committee in accordance with the terms of the delegation.
- (3) A delegation under this clause may be made subject to any conditions or limitations as to the exercise of any function, or as to time or circumstances, that may be specified in the instrument of delegation.
- (4) Despite any delegation under this clause, the Committee may continue to exercise any function delegated.
- (5) Any act or thing done or suffered by a Sub-Committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the Committee.
- (6) The Committee may, by instrument in writing, revoke wholly or in part any delegation under this clause.
- (7) A Sub-Committee may meet and adjourn as it thinks proper.
- (8) There will be no less than 4 members on a Sub-Committee.
- (9) The quorum for a Sub-Committee is 2 members.

## **26 Voting and decisions**

- (1) Questions arising at a meeting of the Committee or of any Sub-Committee appointed by the Committee are to be determined by a majority of the votes of members of the Committee or Sub-Committee present at the meeting.
- (2) Each member present at a meeting of the Committee or of any Sub-Committee appointed by the Committee (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- (3) Subject to clause 22 (5), the Committee may act despite any vacancy on the Committee.
- (4) Any act or thing done or suffered, or purporting to have been done or suffered, by the Committee or by a Sub-Committee appointed by the Committee, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the Committee or Sub-Committee.

## **Part 4 General meetings**

### **27 Annual general meetings - holding of**

- (1) The Association must hold its first Annual General Meeting within 18 months after its registration under the Act.
- (2) The Association must hold its Annual General Meetings:
  - (a) within 6 months after the close of the Association's financial year, or
  - (b) within any later time that may be allowed or prescribed under section 37 (2) (b) of the Act.

### **28 Annual General Meetings - calling of and business at**

- (1) The Annual General Meeting of the Association is, subject to the Act and to clause 27, to be convened on the date and at the place and time that the Committee thinks fit.
- (2) In addition to any other business which may be transacted at an Annual General Meeting, the business of an Annual General Meeting is to include the following:
  - (a) to confirm the minutes of the last preceding Annual General Meeting and of any Special General Meeting held since that meeting,
  - (b) to receive from the Committee reports on the activities of the Association during the last preceding financial year,
  - (c) to elect office-bearers of the Association and ordinary Committee members,
  - (d) to receive and consider any financial statement or report required to be submitted to members under the Act.
- (3) An Annual General Meeting must be specified as that type of meeting in the notice convening it.

### **29 Special General Meetings - calling of**

- (1) The Committee may, whenever it thinks fit, convene a Special General Meeting of the Association.
- (2) The Committee must, on the requisition of at least 5% of the total number of members, convene a Special General Meeting of the Association.
- (3) A requisition of members for a Special General Meeting:
  - (a) must be in writing, and
  - (b) must state the purpose or purposes of the meeting, and
  - (c) must be signed by the members making the requisition, and
  - (d) must be lodged with the Secretary, and
  - (e) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.
- (4) If the Committee fails to convene a Special General Meeting to be held within 1 month after the date on which a requisition of members for the meeting is lodged with the Secretary, any one or more of the members



who made the requisition may convene a Special General Meeting to be held not later than 3 months after that date.

- (5) A Special General Meeting convened by a member or members as referred to in subclause (4) must be convened as nearly as is practicable in the same manner as General Meetings are convened by the Committee.
- (6) For the purposes of subclause (3):
  - (a) a requisition may be in electronic form, and
  - (b) a signature may be transmitted, and a requisition may be lodged, by electronic means.

### **30 Notice**

- (1) Except if the nature of the business proposed to be dealt with at a General Meeting requires a Special Resolution of the Association, the Secretary must, at least 14 days before the date fixed for the holding of the General Meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (2) If the nature of the business proposed to be dealt with at a General Meeting requires a special resolution of the Association, the Secretary must, at least 21 days before the date fixed for the holding of the General Meeting, cause notice to be given to each member specifying, in addition to the matter required under subclause (1), the intention to propose the resolution as a Special Resolution.
- (3) No business other than that specified in the notice convening a General Meeting is to be transacted at the meeting except, in the case of an Annual General Meeting, business which may be transacted under clause 28 (2).
- (4) A member desiring to bring any business before a General Meeting may give notice in writing of that business to the Secretary who must include that business in the next notice calling a General Meeting given after receipt of the notice from the member.

### **31 Quorum for General Meetings**

- (1) No item of business is to be transacted at a General Meeting unless a quorum of members entitled under this constitution to vote is present during the time the meeting is considering that item.
- (2) Five members present (being members entitled under this constitution to vote at a General Meeting) constitute a quorum for the transaction of the business of a General Meeting.
- (3) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
  - (a) if convened on the requisition of members, is to be dissolved, and
  - (b) in any other case, is to stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.

- (4) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least 3) are to constitute a quorum.

### **32 Presiding member**

- (1) The President or, in the President's absence, the Vice-President, is to preside as chairperson at each general meeting of the Association.
- (2) If the President and the Vice-President are absent or unwilling to act, the members present must elect one of their number to preside as chairperson at the meeting.

### **33 Adjournment**

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (2) If a general meeting is adjourned for 14 days or more, the Secretary must give written or oral notice of the adjourned meeting to each member of the Association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (3) Except as provided in subclauses (1) and (2), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

### **34 Making of decisions**

- (1) A question arising at a general meeting of the Association is to be determined by:
  - (a) a show of hands or, if the meeting is one to which clause 39 applies, any appropriate corresponding method that the Committee may determine, or
  - (b) if on the motion of the chairperson or if 5 or more members present at the meeting decide that the question should be determined by a written ballot—a written ballot.
- (2) If the question is to be determined by a show of hands, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the Association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (3) Subclause (2) applies to a method determined by the Committee under subclause (1) (a) in the same way as it applies to a show of hands.
- (4) If the question is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the chairperson.

## **35 Special Resolutions**

- (1) A special resolution may only be passed by the Association in accordance with section 39 of the Act.
- (2) A special resolution must be passed by a general meeting of the Association to affect the following changes:
  - (a) a change of the Association's name,
  - (b) a change of the Association's' constitution,
  - (c) a change in the Association's objects,
  - (d) an amalgamation with another Incorporated Association,
  - (e) to apply for registration as a Company or Co-operative.
- (3) A special resolution to be passed at a general meeting shall be conducted in the following manner:
  - (a) a notice must be sent to all members no later than 21 days before the date on which the meeting is to be held advising that a general meeting is to be held to consider a special resolution.
  - (b) at least three-quarters of those present must vote in favour of the resolution.
- (4) A special resolution to voluntarily wind up the Association and distribute its property, must be passed in a postal ballot conducted by the Association.
- (5) In situations where it is not possible or practicable for a resolution to be passed as described above, a request may be made to the Corporate Affairs Commission for permission to pass the resolution in some other way.

## **36 Voting**

- (1) On any question arising at a General Meeting of the Association a member has one vote only.
- (2) In the case of an equality of votes on a question at a General Meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- (3) A member is not entitled to vote at any General Meeting of the association unless all money due and payable by the member to the Association has been paid.
- (4) A member is not entitled to vote at any General Meeting of the Association if the member is under 18 years of age.

## **37 Proxy votes not permitted**

Proxy voting must not be undertaken at or in respect of a General Meeting.

## **38 Postal or electronic ballots**

- (1) The Association may hold a postal or electronic ballot (as the Committee determines) to determine any issue or proposal (other than an appeal under clause 14).

- (2) A postal or electronic ballot is to be conducted in accordance with Schedule 3 to the Regulation.

### **39 Use of technology at General Meetings**

- (1) A General Meeting may be held at 2 or more venues using any technology approved by the Committee that gives each of the Association's members a reasonable opportunity to participate.
- (2) A member of an Association who participates in a General Meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

## **Part 5 Miscellaneous**

### **40 Insurance**

The Association shall effect and maintain insurance as required under the Act together with any other insurance which may be required by law or regarded as necessary by the Association.

### **41 Funds - source**

- (1) The funds of the Association are to be derived from membership fees and annual subscriptions of members, donations and grants, subject to any resolution passed by the Association in General Meetings and any other sources that the Committee determines.
- (2) All money received by the Association must be deposited as soon as practicable and without deduction to the credit of the Association's bank or other authorised deposit-taking institution account.
- (3) The Association must, as soon as practicable after receiving any money, issue an appropriate receipt.

### **42 Funds - management**

- (1) Subject to any resolution passed by the Association in General Meeting, the funds of the Association are to be used solely in pursuance of the objects of the Association in the manner that the Committee determines.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by 2 authorised signatories.
- (3) The signatories for all accounts shall be four of the following: President, Vice-President, Treasurer, Assistant Treasurer, Secretary, or member of a Sub-Committee appointed under clause 25.
- (4) Additional signatories for the holding of debit cards only, shall be appointed by the Committee.

### **43 Funds - Foundation management**

- (1) The Association may at the Annual General Meeting allocate funds to the Foundation account called "The Friends of the North Coast Regional Botanic Garden Foundation".
- (2) The Foundation can receive new funds from bequests, grants or private donations that are specified for the Foundation Fund.
- (3) Income i.e. the interest from the Foundation fund is managed by the Committee, at the discretion of the Committee.
- (4) 5% of the income i.e. interest from the Foundation account must be added to the funds of the Foundation annually.
- (5) Income from i.e. interest and the funds of the Foundation shall be used to finance only- capital works, scientific research and education.

- (6) Disbursements of the Foundation funds shall be approved at a Special General Meeting of the Association by at least 75 % of votes cast at the meeting.

#### **44 Association is non-profit**

Subject to the Act and the Regulation, the Association must apply its funds and assets solely in pursuance of the objects of the Association and must not conduct its affairs so as to provide a pecuniary gain for any of its members.

#### **45 Change of name, objects and constitution**

An application for registration of a change in the Association's name, objects or constitution in accordance with section 10 of the Act is to be made by the Public Officer or a Committee member.

#### **46 Custody of books etc**

Except as otherwise provided by this constitution, all records, books and other documents relating to the Association must be kept in New South Wales:

- (a) at the main premises of the Association, in the custody of the Public Officer or a member of the Association (as the Committee determines), or
- (b) if the Association has no premises, at the Association's official address, in the custody of the Public Officer.

#### **47 Inspection of books etc**

- (1) The following documents must be open to inspection, free of charge, by a member of the Association at any reasonable hour:
  - (a) records, books and other financial documents of the Association,
  - (b) this constitution,
  - (c) minutes of all Committee meetings and General Meetings of the Association.
- (2) A member of the Association may obtain a copy of any of the documents referred to in subclause (1) on payment of a fee of not more than \$1 for each page copied.
- (3) Despite subclauses (1) and (2), the Committee may refuse to permit a member of the Association to inspect or obtain a copy of records of the Association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.

#### **48 Service of notices**

- (1) For the purpose of this constitution, a notice may be served on or given to a person:
  - (a) by delivering it to the person personally, or
  - (b) by sending it by pre-paid post to the address of the person, or

- (c) by sending it by facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- (2) For the purpose of this constitution, a notice is taken, unless the contrary is proved, to have been given or served:
  - (a) in the case of a notice given or served personally, on the date on which it is received by the addressee, and
  - (b) in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post, and
  - (c) in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent or, if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.

## **49 Financial year**

The financial year of the Association is:

- (a) the period of time commencing on the date of incorporation of the association and ending on the following 30 June, and
- (b) each period of 12 months after the expiration of the previous financial year of the Association, commencing on 1 July and ending on the following 30 June.

## **50 Public Officer**

- (1) The Committee must appoint a Public Officer.
- (2) A Public Officer must be a person over 18 years and a resident of New South Wales
- (3) The position of Public Officer, may but need not, be held by a Committee member.
- (4) The office of Public Officer shall become vacant if the person holding the office:
  - (a) dies,
  - (b) becomes bankrupt,
  - (c) becomes unsound of mind,
  - (d) resigns,
  - (e) cease to be a resident of NSW,
  - (f) ceases to be a member of the Association, or
  - (g) is removed by resolution of a General Meeting of the Association.
- (5) A vacancy shall be filled within 28 days.
- (6) All documents held by the Public Officer must be delivered to a Committee member within 14 days of vacating the office.

## **51 Distribution of property on winding up of Association**

- (1) Subject to the Act and the Regulations, in a winding up of the Association, any surplus property of the Association is to be transferred to another organisation with similar objects and which is not carried on for the profit or gain of its individual members in accordance with a Special Resolution of the Association.
- (2) In this clause, a reference to the surplus property of the Association is a reference to that property of the Association remaining after satisfaction of the debts and liabilities of the Association and the costs, charges and expenses of the winding up of the Association.