
Constitution

Free the Bears Ltd

(ACN 629 120 449)

(A public company limited by guarantee)

26th October 2018

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Part A – Preliminary matters

1 Defined terms and interpretation

- (a) The Dictionary in Schedule 1:
 - (i) defines some of the terms used in this constitution;
 - (ii) sets out the rules of interpretation which apply to this constitution; and
 - (iii) clarifies the effect of the *Corporations Act 2001* (Cth) on this constitution.
- (b) The interpretation clause in Schedule 1 sets out rules of interpretation for this constitution.

2 Nature of Company and liability

- (a) The Company is a public company limited by guarantee.
- (b) The liability of each member is limited. Each member guarantees to contribute up to a maximum of \$10 to the assets of the Company if it is wound up while the member is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the Company exceed its assets. The liability of each member is limited to making such contribution and no more.

Part B – Purpose

3 Purpose, objects and public fund

3.1 Purpose

The purpose of the Company is to protect, conserve and enhance the natural environment (**Environmental Purpose**).

3.2 Activities

The Company must conduct its activities in furtherance of its Environmental Purpose, which may include:

- (a) Developing world-class bear sanctuaries that are government owned, managed to the highest levels of welfare and striving towards long-term sustainability;
- (b) Developing sustainable alternative livelihood programmes for the community to prevent poor families from exploiting bears for profit;
- (c) Strengthening wildlife law enforcement efforts through advocacy and training;
- (d) Protecting wild bear populations through community-led efforts and increased understanding of wild bear populations;
- (e) Building the capacity of local partners and staff, including government authorities, veterinarians, researchers, school-teachers and animal care staff;

- (f) Increasing awareness within Australia on the plight of endangered wildlife, and in particular, globally-threatened bears;
- (g) Promoting compassionate treatment of wild animals, particularly bears, and increased understanding the detrimental impacts of using wild animal body parts in food, medicine or any other purpose;
- (h) Supporting public education programmes within schools, universities and the wider public within Australia on the preservation and protection of the natural habitat of bears; and
- (i) Assisting, where appropriate and in coordination with relevant authorities, the transfer of globally-threatened bears in support of approved ex situ breeding programmes for the overall benefit of the individual bears and their species

3.3 Maintaining a public fund

- (a) The Company will maintain a public fund to be called the Free the Bears Public Fund (**Fund**) for the specific purpose of supporting the Environmental Purpose ;
- (b) 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 bank account; and
- (c) The Fund must comply with subdivision 30-E of the Income Tax Assessment Act 1997 and with the rules at Schedule 2.

Part C – Members and membership

4 Membership

4.1 Members of the Company

- (a) Each properly registered and fully paid up member of the Association as at the date it converted from an incorporated association under the *Associations Incorporation Act 2015 (WA)* to a public company limited by guarantee under the *Corporations Act 2001 (Cth)* (**Conversion**) will:
 - (i) become a member of the Company upon Conversion;
 - (ii) have the rights and obligations of a member described at rule 4.3 and
 - (iii) be required to pay any membership fees determined under rule 4.6.
- (b) The members of the Company are:
 - (i) any person becoming a member under rule 4.1(a); and
 - (ii) any person admitted as a member of the Company by the directors in accordance with rule 4.2.
- (c) If a person is admitted as a member of the Company, the secretary must ensure that:

- (i) the person is given notice of admission as a member of the Company; and
 - (ii) the name and details of the person are entered in the members' register in accordance with rule 4.5.
- (d) The secretary must ensure that each person not admitted as a member of the Company is informed of this decision. The directors may, but are not required to, provide reasons for the decision not to admit a person into membership.

4.2 Becoming a member

To become a member of the Company an applicant must:

- (a) in the case of an individual, be 18 years of age or older and have a genuine commitment to and an understanding of the Environmental Purpose;
- (b) in the case of a body corporate, have complementary purposes to the Environmental Purpose;
- (c) complete and lodge a membership application in such form as determined by the directors from time to time which, for the avoidance of doubt, may include applying using the Internet;
- (d) ensure that all information provided when applying for membership of the Company is true and accurate and is not misleading or deceptive;
- (e) pay any annual fee that may be required under rule 4.6;
- (f) subject to rule 5.5(e), be admitted into membership at the discretion of the directors; and
- (g) satisfy such other membership criteria as the directors may determine from time to time, acting reasonably.

4.3 Member's rights

Each member has the right to:

- (a) receive notices of and to attend and be heard at any general meeting of the Company; and
- (b) exercise one vote when voting upon resolutions of the Company (both in general meeting and as permitted under rule 6.10).

4.4 Membership not transferable

Membership of the Company and the associated rights cannot be transferred or sold in any manner whatsoever.

4.5 Register of members

- (a) A register of members must be kept in accordance with the law.
- (b) Without limiting the requirement under rule 4.5(a), the following must be entered in the register in respect of each member:
 - (i) the name and address of the member;

- (ii) the date of admission to and cessation of membership;
- (iii) in the case of a body corporate member, the full name and contact details of its Representative; and
- (iv) any other information required by the directors or the law from time to time.

4.6 Membership fees

- (a) Unless a different amount applies as determined under rule 4.6(c), the first annual membership fee for a new member of the Company is \$60. The first year's membership fee, if any, is payable at the same time as the application for membership is made. The first year's membership fee will be reimbursed to the applicant if the application for membership is declined.
- (b) Annual membership fees are to be paid at such times and in such manner as the directors determine from time to time.
- (c) The directors may at their complete discretion determine, or waive all or some of, the fees payable by one or more members at any time.
- (d) The annual membership fee that may be required under this rule 4.6 are exclusive of any GST that may be payable.

4.7 Membership renewal

The directors may, at their discretion, send a notice to one or more members requiring that member to confirm or to renew membership of the Company and/or to confirm or update that member's details (**Membership Renewal Notice**).

5 Ceasing to be a member

5.1 General overview

- (a) There are a number of reasons why a member's membership will stop. For instance, if a member:
 - (i) resigns from membership. See rule 5.2;
 - (ii) automatically stops being a member. See rule 5.3; or
 - (iii) is expelled from membership. See rule 5.4.
- (b) The directors may adopt such other policies and procedures relating to the conduct, disciplining, suspension and expulsion of members as they so determine from time to time so long as they are consistent with the requirements set out in this rule 5.

5.2 Resignation from membership

A member may resign from membership of the Company at any time by providing written notice to the Company addressed to the chair or the secretary and upon payment of any outstanding fees payable under rule 4.6. Unless the notice provides otherwise, the resignation takes effect from the date the notice is received.

5.3 Automatic stopping of membership

A member's membership will automatically stop if the member:

- (a) dies, or in the case of a member that is a body corporate is dissolved or wound up;
- (b) fails to pay any required membership fee in accordance with rule 4.6 within one month after the date on which that membership fee becomes due or such later time as the directors may determine;
- (c) fails to return a Membership Renewal Notice within one month after the return due date specified in that notice or such later time as determined by the directors; or
- (d) no longer complies with the membership eligibility requirements described at rule 4.2 as determined by a special resolution of the directors.

5.4 Disciplining, suspension and expulsion of member

- (a) This rule 5.4, together with rule 5.5, describes what needs to happen when considering whether or not to discipline a member. In summary, the process involves:
 - (i) putting the member in question on notice and giving the opportunity to provide information;
 - (ii) passing a directors' resolution to warn, suspend, expel or otherwise discipline that member; and
 - (iii) if the disciplinary action is to expel the member, letting that member know about the right to have the decision reviewed by the members.
- (b) So long as the steps set out in rules 5.4 and 5.5 are followed, the directors may resolve to warn, suspend, expel or otherwise discipline a member if that member:
 - (i) has refused or neglected to comply with the provisions of this constitution; or
 - (ii) has acted in a way that, in the opinion of the directors, is, or could be, prejudicial to the interests or reputation of the Company.

(Member Disciplinary Resolution)

- (c) The directors must give the member in question at least 14 days' notice of the date that the directors will consider the Member Disciplinary Resolution. This notice must be in writing and let the member know:
 - (i) that the directors are to consider warning, suspending, expelling or otherwise disciplining the member;
 - (ii) the reasons why the directors are considering taking the determined action;
 - (iii) of the right for the member to give the directors, either orally or in writing, any explanation or defence relevant to the proposed disciplinary action;
 - (iv) the date, place and time of the meeting at which the resolution is to be considered; and

- (v) of the right for the member to attend the meeting at which the resolution is to be considered but not to be present during any director deliberations or the putting of or voting on the resolution unless the directors resolve otherwise.
- (d) A director that is also a member subject to a Member Disciplinary Resolution is not entitled to vote on that resolution.
- (e) Directors must notify the relevant member in writing about the directors' decision within 10 days after the date a Member Disciplinary Resolution is passed. If the decision is to warn, suspend or otherwise discipline a member (other than expulsion), then the directors decision is final. If the decision is to expel the member then the written notice must let the member know:
 - (i) that the directors have resolved to expel the member; and
 - (ii) the process to be followed if the member wishes to appeal the decision as described at rule 5.5.

(Expulsion Notice)

5.5 Appeal of member expulsion

- (a) A member to be expelled in accordance with a Member Disciplinary Resolution may appeal against that resolution. Such an appeal must be made to the Company in writing addressed to the chair or the secretary and must be received within 10 days after the date of the Expulsion Notice described at rule 5.4(e) or such longer time as the directors may decide in their complete discretion.
- (b) If an appeal notice is received by the directors within the required timeframe, the directors must ensure that (within two months after receipt of the notice) a resolution confirming the expulsion is considered by the members at a general meeting called in accordance with the Corporations Act to consider this resolution only. The member the subject of a Member Disciplinary Resolution must be given the opportunity to make representations at the meeting in relation to the decision of the directors to expel that member.
- (c) If the Member Disciplinary Resolution is confirmed by the members, the member's expulsion takes effect from the date of that resolution. If the members do not confirm the Member Disciplinary Resolution then the member's membership continues in full effect.
- (d) If an appeal notice is not received by the Company within the required timeframe then:
 - (i) the directors are not required to ensure that a resolution confirming the expulsion is considered by the members; and
 - (ii) the member's expulsion takes effect from the date of the Member Disciplinary Resolution.
- (e) A member that has been expelled from membership of the Company is not permitted to be re-admitted into membership of the Company.

6 General meetings

6.1 Introduction

- (a) For so long as the Company is registered as a charity with the Australian Charities and Not-for-profits Commission or its successor, and for so long as the law permits or requires, the directors:
 - (i) may determine whether or not to hold meetings of members including annual general meetings unless the Corporations Act otherwise requires a meeting of members for a particular resolution to be passed;
 - (ii) must ensure that the Australian Charities and Not-for-profits Commission Governance Standards, in particular Governance Standard 2 relating to accountability to members, are complied with; and
 - (iii) must ensure that if the Company does hold a meeting of members, it does so in accordance with this constitution and the Corporations Act despite the fact that the provisions of the Corporations Act dealing with members' meetings may not be binding upon the Company.
- (b) If there is any inconsistency between the Corporations Act and this constitution with respect to the calling and holding of members' meetings then, to the extent permitted by law, the provisions of this constitution will prevail.

6.2 Calling of general meetings

- (a) A general meeting of members may be initiated by:
 - (i) a resolution of the directors;
 - (ii) the members in accordance with the Corporations Act; or
 - (iii) the court in accordance with the Corporations Act.
- (b) A meeting of members may be held in two or more places linked together by any technology so long as it:
 - (i) gives the members as a whole in those places a reasonable opportunity to participate in proceedings;
 - (ii) enables the chair of the meeting to be aware of proceedings in each place; and
 - (iii) enables the members in each place to vote on a show of hands and on a poll.

6.3 Notice of general meetings

- (a) Subject to the provisions of the Corporations Act dealing with consent to short notice, at least 21 days notice of a general meeting of members (including an annual general meeting) must be given to each person who is at the date of the notice:
 - (i) a member of the Company eligible to receive notices of meetings;

- (ii) a person who is at the date of the notice a director of the Company; or
 - (iii) the auditor of the Company.
- (b) A notice of a general meeting must specify:
- (i) the date, time and place of the meeting;
 - (ii) if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
 - (iii) the general nature of the business to be transacted at the meeting; and
 - (iv) any other matters required under the law.
- (c) A person who is entitled to receive notice of a meeting or who is requested by the chair to attend a general meeting is entitled to be present whether or not the person is a member.

6.4 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum is present when the meeting proceeds to business and remains present throughout the meeting.
- (b) The quorum for a general meeting of members is 20 members or a majority of members (whichever number is the lowest) present in person or by proxy.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting and that meeting is called or initiated by members, then the meeting is to be dissolved. Otherwise:
- (i) the meeting stands adjourned to the following week at a time and venue communicated by the chair of the meeting;
 - (ii) at the adjourned meeting the quorum is ten members or a majority of members (whichever number is the lowest) present and entitled under these rules to vote at a general meeting; and
 - (iii) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

6.5 Chair of general meetings

- (a) The chair of directors must preside as chair at each general meeting.
- (b) If the chair of directors is absent or is unwilling to act, then the deputy chair, if one has been appointed, must preside as chair at the meeting.
- (c) If both the chair of directors and deputy chair are absent or are both unwilling to act, then the members present at that meeting may elect a person present to chair the meeting.

6.6 Conduct of general meetings

- (a) The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the

adoption of any procedures which are in the opinion of the chair necessary or desirable for:

- (i) proper and orderly debate or discussion; and
 - (ii) the proper and orderly casting or recording of votes.
- (b) The chair of a general meeting at which a quorum is present may adjourn the meeting from time to time and place to place. However, 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.
- (c) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of the adjournment.

6.7 Decisions at general meetings

- (a) Except in the case of any resolution which under this constitution or as a matter of law requires a special resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting (including being present by technological means) and that decision is for all purposes a decision of the members.
- (b) In the case of an equality of votes upon any proposed resolution at a meeting of members, the chair has a second (or casting) vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands of members unless a poll is demanded.
- (d) A member may only exercise one vote on a show of hands regardless of whether that member also holds one or more proxies.
- (e) A poll may be demanded before a vote being decided by a show of hands is taken or before or immediately after the declaration of the result of the show of hands:
- (i) by the chair of the meeting;
 - (ii) by at least three or more members present and entitled to vote on the relevant resolution; or
 - (iii) by a member or members present at the meeting and representing at least 5% of the votes that may be cast on the resolution on a poll.
- (f) Unless a poll is demanded, a declaration by the chair on the result of a vote on a show of hands is decisive of the outcome of that resolution. Such declaration does not need to refer to the number or proportion of votes for or against the resolution.
- (g) Except for a poll on the question of an adjournment which must be taken immediately, if a poll is demanded at a general meeting, it will be taken when and in the manner that the chair directs, and in all cases the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (h) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
- (i) The demand for a poll may be withdrawn.

6.8 Voting rights

Each member has the right to exercise one vote:

- (a) on a show of hands at a meeting of members;
- (b) on a poll at a meeting of members; and
- (c) when voting upon a resolution to be determined without a meeting under rule 6.10.

6.9 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
 - (i) in person or, if the member is a body corporate through its Representative
 - (ii) by proxy in a form as the directors may prescribe or accept; or
 - (iii) by attorney in a form as the directors may prescribe or accept.
- (b) A proxy, Representative or attorney may be a member of the Company but does not need to be.
- (c) The chair of a meeting may require any person purporting to act as a proxy, attorney or Representative to establish to the satisfaction of the chair that the person has been validly appointed as a proxy, attorney or a Representative and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- (d) If the Company receives a proxy form without the name of the proxy filled in, then the proxy is:
 - (i) the person specified by the Company in the proxy form; or
 - (ii) if no person is specified in the proxy form, the chair of the meeting for which that proxy applies.
- (e) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney is received:
 - (i) at the registered office of the Company or at another place or electronic address specified for that purpose in the notice convening the meeting; and
 - (ii) at least 48 hours before the time scheduled for the commencement of the meeting.
- (f) Unless otherwise permitted by the chair, the authority of a proxy or attorney to speak and vote for a member at a general meeting is suspended while that relevant member is present at the meeting.

6.10 Decisions without meetings

Members may pass resolutions and otherwise make decisions outside of a members' meeting in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of member resolutions as determined by the directors from time to time.

6.11 Resolutions of single member Company

If the Company has only one member, the Company may pass a resolution by that member recording it and signing the record. That record is to be taken as a minute of the passing of that resolution.

Part D – Not-for-profit

7 No profits for members

- (a) Subject to rule 7(b), the assets and income of the Company must be applied solely in furtherance of the Company's Environmental Purpose and no portion of the income or assets of the Company may be paid or transferred, directly or indirectly, to any member.
- (b) The Company may, with the approval of the directors, make payment in good faith to a member of the Company:
 - (i) by way of reasonable and proper remuneration for any goods supplied or services rendered to the Company (including payment as a consultant);
 - (ii) by way of interest on money lent to the Company by that member at a reasonable and proper rate per annum not exceeding the rate for the time being charged by the Company's bankers on overdrawn accounts;
 - (iii) by way of reasonable and proper rent for premises let by that member to the Company; and
 - (iv) for authorised out-of-pocket expenses reasonably and properly incurred by that member in connection with the affairs of the Company.
- (c) For the avoidance of doubt, nothing in this rule 7:
 - (i) prevents a member from receiving such services as may ordinarily be provided by the Company in the course of undertaking its activities; or
 - (ii) prohibits a member from receiving a benefit that is directly related to membership of the Company.

Part E – Directors and secretary

8 Directors

8.1 Number of directors

- (a) The minimum number of directors is three. Subject to rule 8.1(b), the maximum number of directors is eight.

- (b) The directors may change the maximum number of permitted director positions in accordance with the Corporations Act.
- (c) If at any time the number of directors falls below three, the remaining director or directors may act but only:
 - (i) in an emergency;
 - (ii) for the purpose of convening a general meeting of the Company; or
 - (iii) for the purpose of increasing the number of directors to three.

8.2 Becoming a director

Subject to rule 8.4, a person may become a director in four ways:

- (a) election by members, such election to be for a term of three years (**Member Elected Directors**);
- (b) appointment by the directors, such appointment to be for a term of up to three years with the precise period determined by the directors at the time of appointment (**Board Appointed Directors**);
- (c) appointment by the directors of any person to fill any vacancy in the number of Member Elected Directors however arising (**Casual Vacancy**). Such Casual Vacancy is to be filled until the next annual general meeting or, if the Company does not hold an annual general meeting, until the next time an election of directors is held or 12 months (whichever is the shortest period of time) and
- (d) in accordance with rule 8.6.

8.3 Rules about the composition of the board

Subject to rule 8.2(c):

- (a) five of the director positions are reserved for, and may only be filled by Member Elected Directors; and
- (b) three of the director positions are reserved for, and may only be filled by Board Appointed Directors.

8.4 Qualifications and requirements of directors

- (a) To be eligible for election as a Member Elected Director under rule 8.2(a) a person must:
 - (i) be a member of the Company;
 - (ii) be 18 years of age or older;
 - (iii) be nominated in writing for election by at least one member in the way determined by the directors from time to time;
 - (iv) have knowledge about and be committed to the Environmental Purpose;
 - (v) not be ineligible to be a director under the *Corporations Act* or the *ACNC Act*; and

- (vi) meet any other criteria relating to the composition of the board and skills and qualifications of directors as may be determined by the directors from time to time.
- (b) To be eligible to fill a Board Appointed Director position under rule 8.2(b) or to be appointed by the directors to fill a Casual Vacancy under rule 8.2(c), the person must comply with all the requirements of rule 8.4(a) other than the requirement to be nominated by a member.

8.5 Director's time in office

- (a) Each director is to remain as a director until the term of her or his office expires or until he or she resigns or is otherwise removed as a director of the Company in accordance with the law and this constitution.
- (b) A person who holds, or has held, the position of director is not restricted in how many terms of office that person may serve, and is eligible for re-election.

8.6 Director transition

Upon Conversion each current board member of the Association will, subject to that board member's consent, continue in office as a director of the Company.

8.7 Vacation of office

- (a) In addition to the circumstances prescribed by law (including the Corporations Act and the ACNC Act), the office of any director becomes vacant if the director dies or, unless the directors otherwise resolve to confirm the director's position, if the director:
 - (i) becomes bankrupt;
 - (ii) is convicted of an indictable offence
 - (iii) ceases to be a member of the Company; or
 - (iv) fails to attend three or more consecutive directors' meetings in any 12 month period without leave of absence approved by the directors.
- (b) Nothing in rule 8.7(a) prevents a director from vacating his or her office if the director resigns by notice in writing to the Company.

8.8 Payments to directors

- (a) Subject to rule 8.8(c), directors are entitled to be paid all reasonable authorised travelling and other expenses properly incurred by them in connection with the affairs of the Company, including attending and returning from general meetings of the Company, meetings of the directors and meetings of committees but will not otherwise receive any payment for acting as a director.
- (b) Nothing in this rule 8.8 restricts the remuneration to which a director may be entitled as an officer or employee of the Company in a capacity other than director.
- (c) Notwithstanding anything else in this constitution, no payment of any kind which is permitted to be paid to a director by this constitution can be made by the Company to a director until that payment is approved by:

- (i) the directors; or
- (ii) such other person or persons to whom the directors may have delegated such authority in a way consistent with rule 8.19.

8.9 Interested directors

- (a) No contract or other arrangement made between a director and the Company is voided merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (b) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at the meeting or vote on the matter, unless the directors who do not have a material personal interest pass a resolution in accordance with the Corporations Act which permits that director to do so.
- (c) Subject to rule 8.9(d), a director who is in any way interested in an arrangement (other than by having a material personal interest) may, despite that interest, be counted in determining whether a quorum is present at any meeting of directors considering that arrangement.
- (d) Rule 8.9(c) does not apply to the extent that it would be contrary to law.

8.10 Powers and duties of directors

The directors are responsible for managing the business of the Company and may exercise all the powers of the Company which are not required by the law or this constitution to be exercised by the Company in a general meeting.

8.11 Directors' meetings

The directors may hold meetings (including by technological means) for the conduct of business and regulate them as they think fit.

8.12 Convening of meetings of directors

A meeting of directors may be convened by the chair or any three of the directors.

8.13 Notice of directors' meetings

- (a) Notice of a directors' meeting must be given to each current director, other than a director on leave of absence approved by the directors.
- (b) A notice of a directors' meeting must:
 - (i) be given in a way permitted by rule 13;
 - (ii) specify the time and place of and, if relevant, the form of technology for, the meeting;
 - (iii) state the nature of the business to be transacted at the meeting; and
 - (iv) be provided with sufficient time for the directors to properly consider the subject matter contained within the notice and any accompanying materials.

- (c) A resolution passed at a directors' meeting is not invalid just because a director did not receive notice of the meeting provided that:
 - (i) the notice was not received because of accident or error;
 - (ii) before or after the meeting, the director notifies the Company of his or her agreement to the resolution; or
 - (iii) the director attended the meeting.

8.14 Quorum for directors' meetings

- (a) No business may be transacted at a directors' meeting unless there is a quorum of directors at the time the business is dealt with.
- (b) A quorum consists of a majority of current directors.
- (c) For the avoidance of doubt, a director is present at a meeting if participating by technological means such as by telephone.
- (d) If, within 30 minutes after the time appointed for the meeting, a quorum is not present, then, without prejudice to the right of those present to discuss but not to vote on any matter, the meeting will be dissolved or stand adjourned to such time, date and place as those present at the meeting decide.

8.15 Chair and deputy chair

- (a) The directors must appoint a director to the office of chair and may appoint a different director to the office of deputy chair.
- (b) The directors may remove a director from the office of chair and deputy chair at any time but doing so does not remove that person as a director.
- (c) A person may only fill the office of chair or deputy chair for so long as that person is a director of the Company.
- (d) The chair must preside as chair at each directors' meeting unless he or she is unable to attend or unwilling to act.
- (e) If the chair is unable to attend a directors' meeting or is unwilling to act, then the deputy chair, if one has been appointed, must preside as chair of that meeting.
- (f) If both the chair and deputy chair are unable to attend a directors' meeting or are unwilling to act, then the directors present at that meeting must elect a person from those directors present to preside as the chair for that meeting.

8.16 Decisions of directors

- (a) A directors' meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under the law and this constitution.
- (b) Questions arising at a directors' meeting and any other matter to be determined by the directors under this constitution are to be decided by a majority of votes cast by the directors present and a decision of that kind is for all purposes a determination of the directors.

- (c) If there are an equal number of votes cast for and against a resolution at a directors' meeting, then the chair may cast a second (or casting) vote.

8.17 Decisions without meetings

Directors may pass resolutions and otherwise make decisions outside of a directors' meeting in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of director resolutions as determined by the directors from time to time.

8.18 Committees

- (a) The directors may resolve to:
 - (i) establish one or more committees consisting of such persons as they determine;
 - (ii) delegate to each committee such of their powers required for the effective and efficient running and administration of the committee;
 - (iii) revoke any or all of the powers delegated to each committee and vary the nature and scope of the powers delegated; and
 - (iv) change the makeup of a committee at any time or dissolve it altogether.
- (b) A committee must be conducted, and exercise the powers delegated to it, in accordance with any directions of the directors which, for the avoidance of doubt, may be contained within policies, terms of reference, guidelines or protocols.
- (c) The directors may continue to exercise all of their powers despite any delegation made under this rule.

8.19 Delegation to individuals

- (a) The directors may resolve to delegate any of their powers:
 - (i) to one or more directors;
 - (ii) to one or more members; or
 - (iii) to one or more employees.
- (b) The directors may delegate their powers for such time as they determine and may revoke or vary any power so delegated.
- (c) A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the directors.
- (d) The directors may continue to exercise all of their powers despite any delegation.
- (e) A delegation under this rule need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position.

8.20 Validity of acts

An act done by a director or by a meeting of the directors or a committee attended by a director is not invalidated just because:

- (a) of a defect in the appointment of the director;
- (b) the person is disqualified from being a director or has vacated office; or
- (c) the person is not entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

9 Secretaries

- (a) The directors must appoint at least one secretary who may be, but does not need to be, a director.
- (b) The appointment of a secretary may be for the period, on the conditions and, subject to rule 9(c), at the remuneration as the directors determine.
- (c) A director may not be remunerated in his or her capacity as secretary.
- (d) Subject to any contract between the Company and the relevant secretary, a secretary of the Company may be removed or dismissed by the directors at any time, with or without cause. If that person is a director, such removal or dismissal does not remove that person from office as a director.
- (e) The duties of the secretary include, but are not limited to:
 - (i) ensuring that the necessary registers required by the law are established and properly maintained;
 - (ii) ensuring that any required annual returns and annual reports are lodged with the appropriate regulator on time; and
 - (iii) ensuring the organisation of, and attend, meetings of the members and the directors, including the sending out of notices, the preparation of agenda and the compilation of minutes.
- (f) An act done by a person acting as a secretary is not invalidated just because:
 - (i) of a defect in the person's appointment as a secretary; or
 - (ii) the person is disqualified from being a secretary,

if that circumstance was not known by the person when the act was done.

Part F – Winding up

10 Winding up and loss of endorsement

10.1 Winding up

- (a) Prior to winding up or dissolution of the Company, any public fund (including the Fund) operated by the Company must be wound up in accordance with its corresponding rules and the law.
- (b) If upon the winding up or dissolution of the Company there remains after satisfaction of all of its debts and liabilities, any property or moneys whatsoever (**Surplus Assets**), such Surplus Assets must not be paid to, or distributed amongst members, but must be given or transferred to one or more charitable organisations that:
 - (i) has similar purposes or objects to the Environmental Purpose;
 - (ii) by its constituent rules, prohibits the distribution of its income and property amongst its members to an extent at least as great as is imposed upon the Company; and
 - (iii) if the Company is endorsed as a deductible gift recipient in accordance with any commonwealth tax laws, is likewise endorsed as a deductible gift recipient.
- (c) The decision as to which organisation is, or which organisations are, to be the recipient of the Surplus Assets distributed in accordance with rule 10.1(b):
 - (i) is to be determined by the directors at or before the winding up or dissolution of the Company; or
 - (ii) if required, by the Court.
- (d) Any part of the Surplus Assets consisting of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.

10.2 Loss of DGR endorsement

If the endorsement of the Company as a deductible gift recipient is revoked, the following assets remaining after the payment of the Company's liabilities must be transferred to a charitable fund, authority or institution in Australia (as determined by the directors) and to which income tax deductible gifts can be made:

- (a) deductible gifts of money or property received for the Environmental Purpose ;
- (b) deductible contributions made in relation to an eligible fundraising event held to raise funds for the Environmental Purpose ; and
- (c) money received by the Company because of such deductible gifts and contributions.

Part G – Administrative matters

11 Minutes and records

11.1 Minutes

The directors must ensure that the following minutes are recorded, approved and kept in accordance with the law:

- (a) meetings and resolutions of members;
- (b) meetings and resolutions of directors; and
- (c) meetings and resolutions of committees.

11.2 Inspection of records

- (a) Subject to the law and rule 11.2(b), the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the Company or any of them will be open to inspection.
- (b) A member may, upon reasonable notice to the directors, inspect any books, records or documents of the Company, provided the information obtained is only used for a proper purpose in connection with membership of the Company. In the case of directors' minutes and resolutions, the directors may, at their complete discretion, refuse to provide all or some of the directors' minutes or provide such records in a redacted form.
- (c) The Company must establish and administer all registers required to be kept by law and each member must provide the Company with such information as is required for the Company to comply with this rule. If events occur which would cause the information contained in a register maintained by the Company to be inaccurate the member must notify the Company in writing of the change within 21 days of the date of such change occurring.
- (d) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
- (e) The Company must keep all financial and other records required by law.

12 Indemnity and insurance

- (a) To the extent permitted by law, the Company indemnifies its officers (both current and past) for all losses or liabilities incurred by the person as an officer of the Company including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.
- (b) This indemnity:
 - (i) may only be for losses or liabilities incurred as an officer of the Company (either before or after the adoption of this rule);

- (ii) does not cover any loss or liability of an officer seeking to be indemnified under this rule if that loss or liability arises from that person's wilful misconduct or fraud; and
 - (iii) operates only to the extent that the loss or liability is not paid by insurance.
- (c) To the extent permitted by law, the Company may take out and pay for insurance for the benefit of its officers (both current and past) against any liability incurred by the person as an officer of the Company including, but not limited to, a liability for negligence or for legal costs.
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13 Notices

Any notice, document or other communication required or permitted to be given under this constitution or law may be given in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
 - (b) any policies and procedures relating to the giving and receiving of notices, documents and other communications as determined by the directors from time to time.
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14 General

- (a) **Common seal:** The Company may, but is not required to, have and use a common seal. If the directors determine that the Company have a common seal, then it must be kept and used in accordance with the law.
- (b) **Submission to jurisdiction:** Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State of Western Australia, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

Schedule 1 Dictionary

In this constitution:

ACNC Act means *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

Association means Free The Bears Fund Inc (ABN 23 763 253 031).

Casual Vacancy has the meaning given at rule 8.2(c).

Company means Free the Bears Ltd.

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

Department means the department responsible for administering the Register.

Expulsion Notice has the meaning given at rule 5.4(e).

Fund has the meaning given at rule 3.3(a).

Member Disciplinary Resolution has the meaning at rule 5.4(b).

Membership Renewal Notice has the meaning given at rule 4.7.

Register means the Register of Environmental Organisations, established under the *Income Tax Assessment Act 1997* (Cth).

Representative means a representative of a member appointed in the way permitted by section 250D of the Corporations Act regardless of whether that member is in fact bound by the Corporations Act.

Surplus Assets has the meaning given in rule 10.1(b)

2 Interpretation

2.1 General

- (a) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (b) In this constitution, headings are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words importing a gender include every other gender;
 - (iii) except in the context of membership of the Company where reference to the individual is to an individual only, words used to denote persons generally include any Company, corporation, body corporate, body politic, partnership,

joint venture, association, board, group or other body (whether or not the body is incorporated);

- (iv) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (v) the words 'including', 'such as', 'for example' and the like are not, and should not be interpreted to be, words of limitation, unless explicitly stated otherwise; and
 - (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (c) A requirement in this constitution for something to be carried out in writing will be satisfied if the matter in question is carried out in some other lawful manner that is approved by the directors.

2.2 Replaceable rules not to apply

The replaceable rules contained in the *Corporations Act 2001* (Cth) from time to time do not apply to the Company.

Schedule 2 Fund Rules

1 Fund Rules

- (a) The objective of the Fund is to support the Company's Environmental Purpose.
- (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 Company.
- (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 Company.
- (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 persons will administer the fund. The committee will be appointed by the directors of 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.

2 Requirements of the Fund

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

- it changes its name or the name of its Fund;
- there is any change to the membership of the management committee of the Fund; or
- there has been any departure from the model rules for public funds located in the Guidelines to the Register of Environmental Organisations.

3 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 Environmental Purpose.

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.

5 Statistical Information

Statistical information requested by the Department on donations to the Fund will be provided within four months of the end of the financial year.

An audited financial statement for the Company and its Fund is to be supplied with the annual statistical return if requested by the Department. The statement will provide information on the expenditure of Fund monies and the management of Fund assets.