

## **Explanatory note**

### **Murrumbateman Landcare Group Incorporated**

### **Revised 2024 constitution presented for approval by members via a special resolution on 4 July 2024**

The proposed constitution is based on the model constitution 2022 prepared by NSW Fair Trading.

Changes to the model are shown in *Track Changes* mode in a *Markup* version of this document. That version will be provided on request.

Changes are of three types:

- changes made to the 2010 NSW Fair Trading model constitution and passed by special resolution at the 2012 Murrumbateman Landcare Group Annual General Meeting and then applied to this model constitution,
- changes to governance documentation required so that Murrumbateman Landcare Group Inc can register to become a charity with the Australian Charities and Not-for-profits Commission (with provision for also applying for deductible gift recipient status with the Australian Taxation Office), and
- other changes that reflect current practice.

Changes are annotated for clarity.



**DRAFT**

**2024 CONSTITUTION OF**

**Murrumbateman Landcare Group Incorporated**

ABN 48 825 194 113

An incorporated association (incorporated under the *Associations Incorporation Act 2009*, administered by NSW Fair Trading)

-Effective from .....

Commented [SR1]: Added 26/6. SR



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## Preamble for Murrumbateman Landcare Group

This constitution refers to Murrumbateman Landcare Group Incorporated. It is modified from the 2022 Model Constitution provided by NSW Fair Trading.

The object of Murrumbateman Landcare Group Incorporated is to pursue the charitable purpose of advancing the natural environment by working with the Murrumbateman region community to increase native biodiversity and environmental resilience.

The association is a not-for-profit association established to be, and to continue as, a charity.

Other information about the association:

- Incorporation Number: Y2573316
- Date of incorporation: 11-3-1997
- Address: 8 Hercules St Murrumbateman NSW 2582
- GST registered, quarterly reporting on a cash basis
- Financial reporting period: 1 July to 30 June
- Membership period: 1 July to 30 June.

**Commented [SR2]:** Preamble inserted mainly to cover ACNC requirements for charity registration. SR

**Commented [SR3]:** Added 26/6. SR

## Part 1 Preliminary

### 1 Definitions

(1) In this constitution:

**committee member** means an office-bearer or ordinary committee member.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**office-bearer** means a committee member who is elected to an office referred to in clause 14(1)(a)(i) - (v).

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

**register of members** means the register of members maintained under clause 4.

**secretary**, of the association, means:

- (a) the person holding office under this constitution as secretary, or
- (b) if no person holds that office, the public officer of the association.

**special general meeting**, of the association, means a general meeting of the association other than an annual general meeting.

**subcommittee** means a subcommittee established under clause 20.

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

**the Regulation** means the Associations Incorporation Regulation 2022.

**Note:** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this constitution.

(2) The Interpretation Act 1987 applies to this constitution as if it were an instrument made under the Act.

**Note:** The Act, Part 4 deals with various matters relating to the management of associations.

## Part 2 Members of association

### 2 Membership generally

- (1) An individual is taken to be a member of the association if the person applied to be a member under clause 3(1) and the application has been approved.
- (2) A person who is not an individual is not eligible to be a member of the association.

**Commented [SR4]:** Deleted a section not relevant to MLG.

### 3 Membership applications

- (1) A person can apply for membership to any of the committee members. Where a person mails an application to the official address of the association, this is deemed to be a nomination made to a committee member (in this case, the membership secretary).
- (2) An application may be made or lodged by email or other electronic means, or submitted in person to a committee member.
- (3) ~~Where two or more family members from the same household wish to become members, they are each regarded as a financial member. Only one annual subscription fee is required per household.~~
- ~~(2)~~
- (4) The membership secretary must enter the applicant's name in the register of members as soon as practicable after the applicant pays the first annual subscription fee.
- (5) The applicant becomes a financial member once the applicant's name is entered in the register.
- (6) ~~Corporate members are individuals representing a related entity, for example, an adjacent landcare group. They are not asked to pay a subscription fee and are ineligible to vote.~~

**Commented [SR5]:** Change per 2012 constitution. SR

**Commented [SR6]:** Amended to include reference to a committee member. SR

**Commented [SR7]:** Changed 11/6. SR

**Commented [SR8]:** Added to reflect current practice. SR.

**Commented [SR9]:** Para moved from Cl 4 and "financial" inserted. SR 3/7/24

**Commented [SR10]:** Amended to reflect current practice. SR

**Commented [SR11]:** Amended to reflect current practice. SR

**Commented [SR12]:** Added 12/6/24. SR

### 4 Register of members

- (1) The membership secretary must establish and maintain a register of members of the association.
- (2) ~~Where two or more family members from the same household wish to become members, they are each regarded as a member. Only one annual subscription fee is required per household.~~
- (2) The register:
  - (a) may be in written or electronic form, and
  - (b) must include, for each member:
    - (i) the member's given and family name, and
    - (ii) a residential, postal or email address, or a telephone number, and
    - (iii) the date on which the person became a member, and
    - (iv) if the person ceases to be a member, the date on which the person ceased to be a member.
  - (c) must be kept in New South Wales at the main premises of the membership secretary,
  - (d) must be available for inspection, free of charge, by members at a reasonable

**Commented [SR13]:** Change per 2012 constitution. SR

**Commented [SR14]:** Changed 11/6. SR

**Commented [SR15]:** Added to reflect current practice. SR.

**Commented [SR16]:** Para moved from Cl 4 and "financial" inserted. SR 3/7/24

**Commented [SR17]:** Alison Elvin suggestion. SR Later changed to recognise cultures where the family name is first. SR

**Commented [SR18]:** Amended to reflect current practice. SR

**Commented [SR19]:** Change per 2012 constitution. SR

time, and

(e) if kept in electronic form, must be able to be converted to hard copy.

~~(4)~~(3) If the register is kept in electronic form, the requirements in subclause (3)(c) and (d) apply as if a reference to the register is a reference to a current hard copy of the register.

~~(5)~~(4) A member of the association may obtain without charge an emailed copy of any part of the register. A fee of not more than \$1 for each page copied will be levied for a paper copy. If any information requested includes personal information about a particular member (or members) (including address and phone number), then that members (those members) must be notified per subclause (6).

**Commented [SR20]:** Amended to match the 2012 constitution. SR

~~(6)~~(5) Information about a member, other than the member's name, must not be made available for inspection if the member requests that the information not be made available.

~~(7)~~(6) A member must not use information about a member obtained from the register to contact or send material to the member, unless:

(a) the information is used to send the member:

- (i) a newsletter, or
- (ii) a notice for a meeting or other event relating to the association, or
- (iii) other material relating to the association, or

(b) it is necessary to comply with a requirement of the Act or the Regulation.

## 5 Fees and subscriptions

(1) The first annual subscription fee to be paid to the association by a person whose application to be a member of the association has been approved is:

- (a) \$35, or
- (b) another amount determined by the committee.

(2) A member must pay to the association an annual subscription fee of \$40, or another amount determined by the committee. The membership year starts on 1 July.

**Commented [SR21]:** Changes to reflect current practice and decision to raise subs. SR

## 6 Members' liabilities

The liability of a member of the association to contribute to the payment of either of the following is limited to the amount of any outstanding fees for the member under clause 5:

- (a) the debts and liabilities of the association,
- (b) the costs, charges and expenses of the winding up of the association.

## 7 Disciplinary action against members

(1) A person may make a complaint to the committee that a member of the association has:

- (a) failed to comply with a provision of this constitution, or
- (b) willfully acted in a way prejudicial to the interests of the association.

(2) The committee may refuse to deal with a complaint if the committee considers the complaint is trivial or vexatious.

(3) If the committee decides to deal with the complaint, the committee must:

- (a) serve notice of the complaint on the member, and
  - (b) give the member at least 14 days from the day the notice is served on the member within which to make submissions to the committee about the complaint, and
  - (c) consider any submissions made by the member.
- (4) The committee may, by resolution, expel the member from the association or suspend the member's membership if, after considering the complaint, the committee is satisfied that:
- (a) the facts alleged in the complaint have been proved, and
  - (b) the expulsion or suspension is warranted.
- (5) If the committee expels or suspends the member, the secretary must, within 7 days of that action being taken, give the member written notice of:
- (a) the action taken, and
  - (b) the reasons given by the committee for taking the action, and
  - (c) the member's right of appeal under clause 8.
- (6) The expulsion or suspension does not take effect until the later of the following:
- (a) the day the period within which the member is entitled to exercise the member's right of appeal expires, or
  - (b) if the member exercises the member's right of appeal within the period – the day the association confirms the resolution under clause 8.

## **8 Right of appeal against disciplinary action**

- (1) A member may appeal against a resolution of the committee under clause 7 by lodging a notice of appeal with the secretary within 7 days of being served notice of the resolution.
- (2) The member may include, with the notice of appeal, a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) The secretary must notify the committee that the secretary has received a notice of appeal.
- (4) If notified that a notice has been received, the committee must call a general meeting of the association to be held within 28 days of the day the notice was received.
- (5) At the general meeting:
  - (a) no business other than the question of the appeal is to be transacted, and
  - (b) the member must be given an opportunity to state the member's case orally or in writing, or both, and
  - (c) the committee must be given the opportunity to state the committee's case orally or in writing, or both, and
  - (d) the members present must vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (6) The appeal is to be determined by a simple majority of votes cast by the members.

## **9 Resolution of internal disputes**

- (1) The following disputes must be referred to a Community Justice Centre within the

meaning of the *Community Justice Centres Act 1983* for mediation:

- (a) a dispute between 2 or more members of the association, but only if the dispute is between the members in their capacity as members, or
  - (b) a dispute between 1 or more members and the association.
- (2) If the dispute is not resolved by mediation within 3 months of being referred to the Community Justice Centre, the dispute must be referred to arbitration.
- (3) The *Commercial Arbitration Act 2010* applies to a dispute referred to arbitration.

## 10 Membership entitlements not transferable

A right, privilege or obligation that a person has because the person is a member of the association:

- (a) cannot be transferred to another person, and
- (b) terminates once the person ceases to be a member of the association.

## 11 Member resignation

- (1) A member of the association may resign from being a member by advising a committee member that they no longer wish 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 membership secretary must make an appropriate entry in the register of members.

**Commented [SR22]:** Change per 2012 constitution. SR

**Commented [SR23]:** Change per 2012 constitution. SR

## 12 Cessation of membership

A person ceases to be a member of the association if the person:

- (a) dies, or
- (b) resigns from being a member, or
- (c) is expelled from the association, or
- (d) the committee decides that failure to pay the annual subscription fee for two years or more warrants cessation of membership. In this case, the member will be given notice of the cessation and provided with an opportunity to pay the annual subscription fee.

**Commented [SR24]:** Changed to match other descriptions of the subscription fee. SR

**Commented [SR25]:** Changed to subscription fee 11/6. SR

**Commented [SR26]:** Changed to match 2012 constitution and reflect current practice. SR

## Part 3 Committee

### Division 1 Constitution

#### 13 Functions of 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 a function that is required to be exercised by the association in general meeting, and
- (c) has power to do all things that are necessary or convenient to be done for the proper management of the affairs of the association.

#### 14 Composition of committee

- (1) The committee must have at least 7 members, as elected in accordance with clause 15, consisting of:

- (a) the following office-bearers:
  - (i) the president,
  - (ii) the vice-president,
  - (iii) the secretary,
  - (iv) the treasurer, and
  - (v) the membership secretary.
- (b) at least 3 ordinary committee members.

**Note:** The Act, section 28 contains requirements relating to membership eligibility and composition of the committee.

- (2) An office-bearer may hold up to 2 offices, other than both the offices of president and vice-president.

#### 15 Election of committee members

- (1) Any financial member of the association may be nominated as a candidate for election as an office-bearer or ordinary committee member.
- (2) The nomination is made at the annual general meeting at which the election is to take place. The election is conducted by a member acting as a *returning officer* who declares all positions vacant before conducting the election.
- (3) If insufficient nominations are received to fill all vacancies:
  - (a) the candidates nominated are taken to be elected, and
  - (b) a call for further nominations must be made at the meeting.
- (4) A nomination made at the meeting in response to a call for further nominations must be made in the way directed by the returning officer.
- (5) Vacancies that remain after a call for further nominations are taken to be casual vacancies.
- (6) If the number of nominations received is equal to the number of vacancies to be

**Commented [SR27]:** Reflects the current situation and changes made in the 2012 constitution. SR

**Commented [SR28]:** Added a returning officer to reflect current practice. SR

filled, the members nominated are taken to be elected.

- (7) If the number of nominations received for a particular position is more than the number of vacancies to be filled, a ballot must be held for that position at the meeting in the way directed by the returning officer.

**Commented [SR29]:** Changes made to match 2012 constitution and reflect current practice. SR

## 16 Terms of office

- (1) Subject to this constitution, a committee member holds office from the day the member is elected until immediately before the next annual general meeting.
- (2) A member is eligible, if otherwise qualified, for re-election.
- (3) There is no limit on the number of consecutive terms for which a committee member may hold office.

## 17 Vacancies in office

- (1) A casual vacancy in the office of a committee member arises if the member:
  - (a) dies, or
  - (b) ceases to be a member of the association, or
  - (c) resigns from office by written notice given to the president or secretary, or
  - (d) is removed from office by the association under this clause, or
  - (e) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (f) is prohibited from being a director of a company under the *Corporations Act 2001* of the Commonwealth, Part 2D.6, or
  - (g) is convicted of an offence involving fraud or dishonesty for which the maximum penalty is imprisonment for at least 3 months, or
  - (h) becomes a mentally incapacitated person.
- (2) The association in general meeting may, by resolution:
  - (a) remove a committee member from office at any time, and
  - (b) appoint another member of the association to hold office for the balance of the committee member's term of office.
- (3) A committee member to whom a proposed resolution referred to in subclause (2) relates may:
  - (a) give a written statement, of a reasonable length, to the president or secretary, and
  - (b) request that the committee send a copy of the statement to each member of the association at least 7 days before the general meeting at which the proposed resolution will be considered.
- (4) If the committee fails to send a copy of a statement received under subclause (3)(a) to each member in accordance with a request made under subclause (3)(b), the statement must be read aloud by the member presiding at the general meeting at which the proposed resolution will be considered.
- (5) The committee may appoint a member of the association to fill a casual vacancy other than a vacancy arising from the removal from office of a committee member.
- (6) Subject to this constitution, a member appointed to fill a casual vacancy holds office until the next annual general meeting.

**Commented [SR30]:** Reflecting current practice. SR

**Commented [SR31]:** Change per 2012 constitution. SR

## 18 Secretary

- (1) As soon as practicable after being elected as secretary, the secretary must lodge a notice with the association specifying the secretary's address.
- (2) The secretary must keep minutes of:
  - (a) all elections of committee members, and
  - (b) the names of committee members present at a meeting of the committee or a general meeting, and
  - (c) all proceedings at committee meetings and general meetings.
- (3) The minutes must be:
  - (a) kept in written or electronic form, and
  - (b) for minutes of proceedings at a meeting -signed, in writing or by electronic means, by:
    - (i) the member who presided at the meeting, or
    - (ii) the member presiding at the subsequent meeting.

## 19 Treasurer

- (1) The treasurer of the association must ensure:
  - (a) all money owed to the association is collected, and
  - (b) all payments authorised by the association are made, and
  - (c) correct books and accounts are kept showing the financial affairs of the association, including full details of receipts and expenditure relating to the association's activities.
- (2) The treasurer may make payments by electronic funds transfer from a 'treasurer's fund' held as an authorised deposit-taking institution account.
  - (a) Payments made into the treasurer's fund authorised deposit-taking institution account are to be limited to an amount agreed by the committee annually and are to be signed by any 2 members authorised to operate on the relevant account.
  - (b) In all other cases, cheques and other payments must be signed (including electronically) by any 2 members who have been authorised by the committee to operate on the relevant authorised deposit-taking institution accounts. The authorisations should be reviewed by the committee at least annually.

**Commented [SR32]:** Numbering in this para changed 18/6. SR

**Commented [SR33]:** This is from the 2012 constitution and doesn't seem to be covered in the 2022 model. Changes made followed suggestions by Lisa Borella to add annual reviews by the committee. SR

## 20 Delegation to subcommittees

- (1) The committee may:
  - (a) establish 1 or more subcommittees to assist the committee to exercise the committee's functions, and
  - (b) appoint 1 or more members of the association to be the members of the subcommittee.
- (2) The committee may delegate to the subcommittee the exercise of the committee's functions specified in the instrument, other than:
  - (a) this power of delegation, or
  - (b) a duty imposed on the committee by the Act or another law.

**Note:** The *Interpretation Act 1987*, section 49 deals with various matters relating to delegations.

## Division 2 Procedure

### 21 Committee meetings

- (1) The committee must meet at least twice in each 12-month period at the place and time determined by the committee.
- (2) Additional meetings of the committee may be called by any committee member.
- (3) The procedure for calling and conducting business at a meeting of a subcommittee is to be as determined by the subcommittee.

**Note:** The Act, section 30(1) provides that committee meetings may be held as and when the association's constitution requires.

**Commented [SR34]:** Change per 2012 constitution. SR

### 22 Notice of committee meeting

- (1) The secretary must give each committee member oral or written notice of a meeting of the committee at least 48 hours, or another period on which the committee members unanimously agree, before the time the meeting is due to commence.
- (2) The notice must describe the general nature of the business to be transacted at the meeting.
- (3) The only business that may be transacted at the meeting is:
  - (a) the business described in the notice, and
  - (b) any other business that the committee members present at the meeting unanimously agree should be discussed.

**Commented [SR35]:** Changed to reflect current practice. SR

### 23 Quorum

- (1) The quorum for a meeting of the committee is 3 committee members.
- (2) No business may be transacted by the committee unless a quorum is present.
- (3) If a quorum is not present within half an hour of the time the meeting commences, the meeting is adjourned to a suitable time and place.
- (4) If a quorum is not present within half an hour of the time the adjourned meeting commences, the meeting is dissolved.
- (5) If the number of committee members is less than the number required to constitute a quorum for a committee meeting, the committee members may appoint 1 or more members of the association as committee members to enable the quorum to be constituted.
- (6) A committee member appointed under subclause (5) holds office, subject to this constitution, until the next annual general meeting.
- (7) This clause does not apply to the filling of a casual vacancy to which clause 17 applies.

**Note:** The Act, section 28A provides for the filling of vacancies on the committee to constitute a quorum.

**Commented [SR36]:** Change per 2012 constitution. SR

### 24 Presiding committee member

- (1) The following committee member presides at a meeting of the committee:
  - (a) the president,

- (b) if the president is absent – the vice-president,
  - (c) if both the president and vice-president are absent – 1 of the members present at the meeting, as elected by the other members.
- (2) The member presiding at the meeting has:
- (a) a deliberative vote, and
  - (b) in the event of an equality of votes – a second or casting vote.

## 25 Voting

A decision supported by a majority of the votes cast at a meeting of the committee or a subcommittee at which a quorum is present is the decision of the committee or subcommittee.

## 26 Acts valid despite vacancies or defects

- (1) Subject to clause 23(1), the committee may act despite there being a casual vacancy in the office of a committee member.
- (2) An act done by a committee or subcommittee is not invalidated because of a defect relating to the qualifications or appointment of a member of the committee or subcommittee.

## 27 Transaction of business outside meetings or by telephone or other means

- (1) The committee may transact its business by the circulation of papers, including by electronic means, among all committee members.
- (2) If the committee transacts business by the circulation of papers, a written resolution, approved in writing by a majority of committee members, is taken to be a decision of the committee made at a meeting of the committee.
- (3) The committee may transact its business at a meeting at which 1 or more committee members participate by telephone or other electronic means, provided a member who speaks on a matter can be heard by the other members.
- (4) The member presiding at the meeting and each other member have the same voting rights as they would have at an ordinary meeting of the committee for the purposes of:
  - (a) the approval of a resolution under subclause (2), or
  - (b) a meeting held in accordance with subclause (3).
- (5) A resolution approved under subclause (2) must be recorded in the minutes of the meetings of the committee.

**Note:** The Act, section 30(2) and (3) contains requirements relating to meetings held at 2 or more venues using technology.

## Part 4 General meetings of association

### 28 Annual general meetings

- (1) The association must hold the association's first annual general meeting within 18 months of the day the association was registered under the Act.
- (2) The association must hold subsequent annual general meetings within:
  - (a) 6 months of the last day of the association's financial year, or
  - (b) the later period allowed or prescribed in accordance with the Act, section 37(2)(b).
- (3) Subject to the Act and subclauses (1) and (2), the annual general meeting is to be held at the place and time determined by the committee.
- (4) The business that may be transacted at an annual general meeting includes the following:
  - (a) confirming the minutes of the previous annual general meeting and any special general meetings held since the previous annual general meeting,
  - (b) receiving reports from the committee on the association's activities during the previous financial year,
  - (c) electing office-bearers and ordinary committee members,
  - (d) receiving and considering financial statements or reports required to be submitted to members of the association under the Act.

**Note:** The Act, section 37(1) and (2) provides for when annual general meetings must be held.

### 29 Special general meetings

- (1) The committee may call a special general meeting whenever the committee thinks fit.
- (2) The committee must call a special general meeting if the committee receives a request made by at least 5% of the total number of members.
- (3) The request:
  - (a) must be in writing, and
  - (b) must state the purpose of the meeting, and
  - (c) must be signed by the members making the request, and
  - (d) may consist of more than 1 document in a similar form signed by 1 or more members, and
  - (e) must be lodged with the secretary, and
  - (f) may be in electronic form and signed and lodged by electronic means.
- (4) If the committee fails to call a special general meeting within 1 month of the request being lodged, 1 or more of the members who made the request may call a special general meeting to be held within 3 months of the date the request was lodged.
- (5) A special general meeting held under subclause (4) must be conducted, as far as practicable, in the same way as a general meeting called by the committee.

### 30 Notice of general meeting

- (1) The secretary must give each member notice of a general meeting:

- (a) if a matter to be determined at the meeting requires a special resolution – at least 21 days before the meeting, or
  - (b) otherwise – at least 14 days before the meeting.
- (2) The notice must specify:
- (a) the place and time at which the meeting will be held, and
  - (b) the nature of the business to be transacted at the meeting, and
  - (c) if a matter to be determined at the meeting requires a special resolution – that a special resolution will be proposed, and
  - (d) for an annual general meeting – that the meeting to be held is an annual general meeting.
- (3) Business to be transacted at the meeting includes:
- (a) the business specified in the notice, and
  - (b) for an annual general meeting – business referred to in clause 28(4).
- (4) A member may give written notice to the secretary of business the member wishes to raise at a general meeting.
- (5) If the secretary receives a notice under subclause (4), the secretary must specify the nature of the business in the next notice calling a general meeting.

**Commented [SR37]:** Changed to reflect current practice. SR

### 31 Quorum

- (1) The quorum for a general meeting is 5 members of the association entitled to vote under this constitution.
- (2) No business may be transacted at a general meeting unless a quorum is present.
- (3) If a quorum is not present within half an hour of the time the meeting commences, the meeting:
  - (a) if called on the request of members – is dissolved, or
  - (b) otherwise – is adjourned:
    - (i) to a suitable place and time, subject to clause 28 (2) in the case of an annual general meeting and
    - (ii) a written notice must be given to members at least 1 day before the adjourned meeting.
- (4) If a quorum is not present within half an hour of the time an adjourned meeting commences, but there are at least 3 members present, the members present constitute a quorum.

**Commented [SR38]:** Change per 2012 constitution. SR

**Commented [SR39]:** Change per 2012 constitution. SR

### 32 Adjourned meetings

- (1) The member presiding at a general meeting may, with the consent of the majority of the members present, adjourn the meeting to another time and place.
- (2) The only business that may be transacted at the adjourned meeting is the business remaining from the meeting at which the adjournment took place.
- (3) If a meeting is adjourned for at least 14 days, the secretary must give each member oral or written notice, at least 1 day before the adjourned meeting, of:
  - (a) the time and place at which the adjourned meeting will be held, and
  - (b) the nature of the business to be transacted at the adjourned meeting.

### 33 Presiding member

- (1) The following member presides at a general meeting:
  - (a) the president,
  - (b) if the president is absent – the vice-president,
  - (c) if both the president and vice-president are absent – 1 of the members present at the meeting, as elected by the other members.
- (2) The member presiding at the meeting has:
  - (a) a deliberative vote, and
  - (b) in the event of an equality of votes – a second or casting vote.

### 34 Voting

- (1) A member is not entitled to vote at a general meeting unless the member:
  - (a) is at least 18 years of age, and
  - (b) has paid the annual subscription fee for the current year.
- (2) Each member has 1 vote, except as provided by clause 33(2)(b).
- (3) A question raised at the meeting must be decided by:
  - (a) a show of hands, or
  - (b) if clause 36 applies – an appropriate method as determined by the committee, or
  - (c) a written ballot, but only if:
    - (i) the member presiding at the meeting moves that the question be decided by ballot, or
    - (ii) at least 5 members agree the question should be determined by ballot.
- (4) If a question is decided using a method referred to in subclause (3)(a) or (b), either of the following is sufficient evidence that a resolution has been carried, whether unanimously or by a majority, or lost, using the method:
  - (a) a declaration by the member presiding at the meeting,
  - (b) an entry in the association's minute book.
- (5) A written ballot must be conducted in accordance with the directions of the member presiding.
- (6) A member cannot cast a vote by proxy.

Commented [SR40]: Changed to reflect current practice. SR

### 35 Postal or electronic ballots

- (1) The association may hold a postal or electronic ballot, as determined by the committee, to decide any matter other than an appeal under clause 8.
- (2) The ballot must be conducted in accordance with Schedule 2 of the Regulation.

### 36 Transaction of business outside meetings or by telephone or other means

- (1) The association may transact its business by the circulation of papers, including by electronic means, among all members of the association.
- (2) If the association transacts business by the circulation of papers, a written resolution,

approved in writing by a majority of members, is taken to be a decision of the association made at a general meeting.

- (3) The association may transact its business at a general meeting at which 1 or more members participate by telephone or other electronic means, provided a member who speaks on a matter can be heard by the other members.
- (4) The member presiding at the meeting and each other member have the same voting rights as they would have at an ordinary meeting of the association for the purposes of:
  - (a) the approval of a resolution under subclause (2), or
  - (b) a meeting held in accordance with subclause (3).
- (5) A resolution approved under subclause (2) must be recorded in the minutes of the meetings of the association.

**Note:** The Act, section 37(3) and (4) contains requirements relating to meetings held at 2 or more venues using technology.

## Part 5 Administration

### 37 Change of name, objects or constitution

An application for registration of a change in the association's name, objects or constitution made under the Act, section 10 must be made by:

- (a) the public officer, or
- (b) a committee member.

### 38 Funds

- (1) Subject to a resolution passed by the association, the association's funds may be derived from the following sources only:
  - (a) the entrance fees and annual subscription fees payable by members,
  - (b) donations,
  - (c) grants, or
  - (d) other sources as determined by the committee.
- (2) The association's funds and assets must be used to pursue the association's charitable objects in the way that the committee determines.
- (3) As soon as practicable after receiving money, the association must:
  - (a) deposit the money, without deduction, to the credit of one of the association's authorised deposit-taking institution accounts, and
  - (b) issue a receipt for the amount of money received to the person or organisation from whom the money was received if this is requested by the payer.

**Note:** The Act, section 36 provides for the appointment of authorised signatories.

**Commented [SR41]:** Change made 11/6. SR

**Commented [SR42]:** Change per 2012 constitution. SR

**Commented [SR43]:** This is covered in more detail under Treasurer. SR

### 39 Insurance

The association may take out and maintain insurance as appropriate for the association's assets and liabilities.

### 40 Non-profit status

- (1) Subject to the Act and the Regulation, the association must not conduct the association's affairs in a way that provides a pecuniary gain for a member of the association.
- (2) The assets and income of the association shall be applied solely to further its objects.
- (3) The association must not distribute any assets or income directly or indirectly to its members, except paying a member for goods or services they have provided, expenses they have properly incurred at fair and reasonable rates or making a payment to a member in carrying out the association's charitable purpose. The association's financial members may be given native plants free of charge that they use to improve the natural environment on their properties, in furtherance of the objectives of Landcare.

**Note:** See the Act, section 40.

**Commented [SR44]:** Included to cover ACNC requirements. SR

### 41 Service of notices

- (1) For the purposes of this constitution, a notice may be given to or served on a person:

- (a) by delivering the notice to the person personally, or
  - (b) by sending the notice by pre-paid post to the address of the person, or
  - (c) by sending the notice by electronic transmission to an address specified by the person for giving or serving the notice.
- (2) A notice is taken to have been given to or served on a person, unless the contrary is proved:
- (a) for a notice given or served personally – on the date on which the notice is received by the person, or
  - (b) for a notice sent by pre-paid post – on the date on which the notice would have been delivered in the ordinary course of post, or
  - (c) for a notice sent by electronic transmission:
    - (i) on the date the notice was sent, or
    - (ii) if the machine from which the transmission was sent produces a report indicating the notice was sent on a later date—on the later date.

## 42 Custody of records and books

Except as otherwise provided by this constitution, all records, books and other documents relating to the association must be kept in New South Wales in the custody of the relevant office bearer at their address.

Commented [SR45]: Change per 2012 constitution. SR

## 43 Inspection of records and books

- (1) The following documents must be available for inspection, free of charge, by members of the association at a reasonable time:
  - (a) this constitution,
  - (b) minutes of committee meetings and general meetings of the association,
  - (c) records, books and other documents relating to the association.
- (2) A member may inspect a document referred to in subclause (1):
  - (a) in hard copy, or
  - (b) in electronic form, if available.
- (3) A member of the association may obtain without charge an emailed copy of any of the documents referred to in subclause (1). A fee of not more than \$1 for each page copied will be levied for a paper copy.
- (4) The committee may refuse to allow a member to inspect or obtain a copy of a document under this clause:
  - (a) that relates to confidential, personal, commercial, employment or legal matters, or
  - (b) if the committee considers it would be prejudicial to the interests of the association for the member to do so.

Commented [SR46]: Change per 2012 constitution. SR

## 44 Financial year

The association's financial year is:

- (a) the period 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, commencing on 1 July and ending on the following 30 June.

**Note:** The Regulation, section 21 contains a substitute clause 44 for certain associations incorporated under the *Associations Incorporation Act 1984*.

#### 45 Distribution of property on winding up

- (1) Subject to the Act and the Regulation, in a winding up of the association, the surplus property of the association must be transferred to one or more charities:
  - (a) with a charitable purpose(s) similar to, or inclusive of, the purpose *advancing the natural environment*, and
  - (b) which also prohibits the distribution of any assets or income to its members to at least the same extent as the association.
- (2) In this clause:
  - surplus property** has the same meaning as in the Act, section 65.
- (3) If the organisation is endorsed as a deductible gift recipient and if it is wound up, or its endorsement as a deductible gift recipient is revoked (whichever occurs first) any surplus of the following assets shall be transferred to another organisation with similar objects, which is charitable at law, to which income tax deductible gifts can be made:
  - (a) gifts of money or property for the principal purpose of the organisation,
  - (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the organisation, and
  - (c) money received by the organisation because of such gifts and contributions.
- (4) If the organisation applies to become a deductible gift recipient, a gift fund will be created, the balance of which will be dealt with per clause (3).

**Commented [SR47]:** This para rewritten to cover ACNC and DGR requirements. SR

**Commented [SR48]:** Added wording from the ATO website for DGR status [Endorsement as a whole](#) | Australian Taxation Office ([ato.gov.au](http://ato.gov.au)). SR

**Commented [SR49]:** Added 25/6 following more research into gift funds. SR