

**FRIENDS OF THE AUSTRALIAN NATIONAL BOTANIC GARDENS INC**

**CONSTITUTION**

**OCTOBER 2015**

**TABLE OF CONTENTS**

<b>PART 1</b>	<b>PRELIMINARY</b>
	1.1 Name
	1.2. Definition and Interpretation
	1.2.1 Definitions
	1.2.2 Interpretations
<b>PART 2</b>	<b>PURPOSES AND OBJECTIVES</b>
	2.1 Purposes
	2.2 Objectives
<b>PART 3</b>	<b>INCORPORATION</b>
	3.1 Incorporated under ACT Associations Incorporation Act 1991
	3.2 Non-Profit Organisation
<b>PART 4</b>	<b>MEMORANDUM OF UNDERSTANDING (MOU) WITH DIRECTOR OF NATIONAL PARKS</b>
	4.1 Purpose of MOU
<b>PART 5</b>	<b>MEMBERSHIP</b>
	5.1 Number of Members
	5.2 Eligibility for Membership
	5.3 Categories of Membership
	5.3.1 Membership
	5.3.2 Life Membership
	5.3.3 Complimentary Membership
	5.3.4 Other Categories
	5.4 Application for Membership
	5.5 Consideration of Membership Application
	5.6 Register of Members
	5.7 Membership Fees
	5.8 Rights not Transferable
	5.9 Cessation of Membership
	5.10 Member's Liability
	5.11 Disciplining of Members
	5.12 Rights of Appeal for Disciplined Member

**PART 6 COUNCIL OF THE FRIENDS**

- 6.1 Role and Powers of Council
- 6.2 Composition of Council
  - 6.2.1 Elected Members of Council
  - 6.2.2 Ex-officio Members of Council
- 6.3 Executive Committee of Council
  - 6.3.1 Composition of Executive Committee
  - 6.3.2 Role of Executive Committee
  - 6.3.3 Duties of Executive Committee Members
- 6.4 Election of Council Members
  - 6.4.1 Nominations
  - 6.4.2 Executive Committee
  - 6.4.3 Ordinary Council Members
  - 6.4.4 Voting
- 6.5 Terms of Office
- 6.6 Casual Vacancies
- 6.7 Vacation of Office
- 6.8 Removal of Council Members
- 6.9 Delegation by Council
- 6.10 Non Pecuniary Role of Council Members

**PART 7 MEETINGS**

- 7.1 Meetings of Council
  - 7.1.1 Meeting Frequency
  - 7.1.2 Notice of Meetings
  - 7.1.3 Conduct of Meetings
  - 7.1.4 Quorum
  - 7.1.5 Voting
  - 7.1.6 Conflict of Interest
  - 7.1.7 Minutes
  - 7.1.8 Out of Session Meetings
- 7.2 Meetings of the Friends (Annual General and Special General Meetings)
  - 7.2.1 Annual General Meeting
  - 7.2.2 Special General Meeting
  - 7.2.3 Notice of Meetings
  - 7.2.4 Conduct of Meetings
  - 7.2.5 Quorum
  - 7.2.6 Voting
  - 7.2.7 Minutes

**PART 8 PATRON/VICE PATRON**

- 8.1 Appointment of Patron/Vice Patron

**PART 9**

**PUBLIC OFFICER**

- 9.1 Appointment of Public Officer
- 9.2 Eligibility for Public Officer
- 9.3 Duties of Public Officer
- 9.4 Grounds for Office Becoming Vacant
- 9.5 Termination of Appointment

**PART 10**

**FINANCIAL MATTERS**

- 10.1 Financial Year
- 10.2 Source of Funds
- 10.3 Management of Funds
- 10.4 Financial Records
- 10.5 Financial Statements
- 10.6 Appointment of Auditor

**PART 11**

**PUBLIC FUND**

- 11.1 Establishment of Fund
- 11.2 Requirements of the Fund
- 11.3 Ministerial Rules
- 11.4 Not-for-Profit
- 11.5 Conduit Policy
- 11.6 Winding-up
- 11.7 Reporting Requirements
- 11.8 Rules for the Fund

**PART 12**

**VETO POWER OF EXECUTIVE DIRECTOR**

- 12.1 Exercise of Power

**PART 13**

**GENERAL MATTERS**

- 13.1 Indemnity
- 13.2 Common Seal
- 13.3 Record Keeping
- 13.4 Inspection of Records and other Documents
- 13.5 By-laws
- 13.6 Amendment of Constitution
- 13.7 Dissolution of Friends

# **1 Preliminary**

## **1.1 Name**

The name of the Association is Friends of the Australian National Botanic Gardens Incorporated.

## **1.2 Definitions and Interpretation**

### **1.2.1 Definitions**

In this Constitution:

**Act** means the *ACT Associations Incorporation Act 1991*;

**ANBG** means the Australian National Botanic Gardens;

**Auditor** means the person as auditor in accordance with clause 10.6;

**By-laws** mean by-laws made by the Council under clause 13.5;

**Chairperson** means the Council member holding that position under sub-clause 6.3.3;

**Common Seal** means the Friends' common seal referred to in clause 13.2;

**Council of the Friends** means the Council comprising members referred to in clause 6.2;

**Executive Committee** means the Executive Committee of the Council comprising the members referred to in clause 6.3;

**Executive Director** means the Executive Director of the Australian National Botanic Gardens;

**Ex-officio Members of Council** means those persons referred to in clause 6.2.2;

**Financial Year** means the year ending on 30 June;

**Financial Records** mean the financial records referred to in clause 10.4;

**Financial Statements** mean the financial statements referred to in clause 10.5;

**Friends** mean the Friends of the Australian National Botanic Gardens;

**Gardens** mean the Australian National Botanic Gardens;

**Meeting of the Council** means a meeting of the Council of the Friends referred to in clause 7.1;

**Meeting of the Friends** means an annual general meeting or special general meeting referred to in clause 7.2;

**Member** means a member, however described, of the Friends;

**Memorandum of Understanding** means the Memorandum of Understanding between the Friends and Director of National Parks in accordance with clause 4;

**Patron or Vice Patron** mean the person/s appointed in accordance with clause 8;

**Public Fund** (also referred to as the Fund) means the Friends of the ANBG Public Fund established by the Friends and administered by the Council in accordance with the requirements of clause 11;

**Public Officer** means the person appointed in accordance with clause 9;

**Register** means the register of the members of the Friends referred to in clause 5.6;

**Regulations** mean any regulations made under the Act and contained in the *ACT Associations Incorporation Regulations 1991*;

**Resolution** means a resolution of the Council of the Friends made in accordance with the provisions of this Constitution;

**Territory** means the Australian Capital Territory;

**Voting Members** mean financial Individual members, Household members, Botanical Interest Group and Organisational members, Life Members and Complimentary members.

### 1.2.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a law includes regulations and instruments made under the law;
- (d) a reference to a clause or sub-clause is a reference to one of the clauses or sub-clauses in this Constitution;
- (e) headings are inserted for convenience and do not affect the interpretation of this Constitution;
- (f) a reference to a meeting includes a meeting by technology where all attendees have reasonable opportunity to participate;
- (g) “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form, including, without limitation, any representation of words in a physical document or in electronic communication or form or otherwise;

- (h) where by a provision of this Constitution, a document, including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State, Territory or Commonwealth law relating to electronic communications, or any other method approved by the Council.

## **2 Purposes and Objectives**

### **2.1 Purposes**

The Friends of the Australian National Botanic Gardens is established for the purpose of supporting the Gardens:

- (a) in the protection, conservation and enhancement of the natural environment through the collection and maintenance of a significant collection of Australian native flora and related material;
- (b) in research into and display of the diversity and conservation values of Australian plants, their ecological and geographic distribution and their horticultural values;
- (c) in providing information and education to the community about growing, studying, conserving and promoting Australian plants through, but not limited to, lectures, workshops and guided tours.

### **2.2 Objectives**

The objectives of the Friends shall be to:

- (a) increase community awareness and knowledge of the scientific, educational, conservation, aesthetic and recreational functions of the Gardens;
- (b) promote and support the continued development and maintenance of the Gardens;
- (c) encourage the use and enjoyment of the Gardens by the community; and
- (d) all such other things as are incidental or conducive to the attainment of these objectives.

## **3 Incorporation**

### **3.1 Incorporated under ACT Associations Incorporation Act 1991**

The Friends is incorporated under the *ACT Associations Incorporation Act 1991* of the Australian Capital Territory and this Constitution is subject to the provisions of that Act.

### **3.2 Non-profit Organisation**

The Friends is a non-profit tax exempt community based organisation and is not formed, nor shall it be carried on, for the purpose of trading or securing pecuniary profit to its members.

## **4 Memorandum of Understanding (MOU) with Director of National Parks (DNP)**

### **4.1 Purpose of MOU**

A MOU has been created between the Director of National Parks and Friends. The purpose of this MOU is to provide a framework within which the Friends and the DNP can work collaboratively to perform the functions of the DNP and carry out the purposes and objectives of the Friends.

Nothing in this MOU is intended to give rise to legally enforceable rights or obligations between the parties.

## **5 Membership**

### **5.1 Number of Members**

The number of members of the Friends is not limited.

### **5.2 Eligibility for Membership**

Any person, group, or organisation which is committed to and supports the purposes and objectives of the Friends shall be eligible for membership.

### **5.3. Categories of Membership**

#### **5.3.1 Membership**

Members include:

- (a) Individuals;
- (b) Households (which means persons residing at the same address);
- (c) Botanical Interest Groups and other Organisations.

Benefits of membership shall be determined by the Council on a regular basis.

#### **5.3.2 Life Membership**

Council may award Life Membership to a member who has provided outstanding service to the Friends:

- (a) Life Membership shall be conferred by a majority vote of the Council; and
- (b) that membership has all the benefits of a financial member but the life member is not required to pay membership fees.

#### **5.3.3 Complimentary Membership**

Council may award Complimentary Membership for a period not exceeding one financial year to individuals who have made recent contributions to the purposes and objectives of the Friends.

#### **5.3.4 Other Categories**

Other categories of membership may be determined from time-to-time as specified in by-laws.

#### **5.4 Application for Membership**

An application for membership must be:

- (a) made in writing on the prescribed forms; and
- (b) lodged with the Secretary of the Friends.

#### **5.5 Consideration of Membership Application**

- (a) The Secretary shall coordinate the processing of membership applications and may refer applications to Council for decision.
- (b) The names of new and lapsed members shall be referred to the Council on a regular basis.

#### **5.6 Register of Members**

A register of members shall be held by the Friends and include:

- (a) the name, address, and where applicable the telephone and email address of each member of the Friends;
- (b) the date each member became a member of the Friends; and
- (c) the date each member ceased to be a member of the Friends.

#### **5.7 Membership Fees**

- (a) Annual membership fees for each category of membership, with the exception of Life Membership, shall be determined by the Council.
- (b) A member shall be a financial member only if membership fees have been paid by the date determined by the Council.

#### **5.8 Rights not Transferable**

All rights, benefits or obligations that a person has because of being a member of the Friends:

- (a) cannot be transferred or transmitted to another person; and
- (b) terminates on cessation of the person's membership.

#### **5.9 Cessation of Membership**

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

- (a) dies;
- (b) resigns in writing from membership of the Friends;
- (c) is expelled from the Friends; or
- (d) fails to renew their membership of the Friends.

#### **5.10 Member's Liability**

The liability of a member to contribute towards the payment of the debts and liabilities of the Friends or the costs, charges and expenses of the winding-up of the Friends is limited to the amount (if any) unpaid by the member in relation to membership of the Friends as required in clause 5.7 Membership Fees.

#### **5.11 Disciplining of Members**

**5.11.1** If the Council is of the opinion that a member:

- (a) has persistently refused or neglected to comply with a provision of this Constitution; or
- (b) has persistently and wilfully acted in a manner prejudicial to the interests of the Friends;

the Council may, by resolution:

- (c) expel the member from the Friends; or
- (d) suspend the member from the rights and privileges of membership of the Friends for a specified period determined by Council.

That resolution will take effect unless the member seeks review of that resolution in accordance with sub-clause 5.11.2.

**5.11.2** If the Council passes a resolution under sub-clause 5.11.1 the Secretary must, as soon as practicable, serve a written notice on the member:

- (a) setting out the resolution of the Council and the grounds on which it is based; and
- (b) stating that the member may address the Council at a meeting to be held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service of the notice; and
- (c) stating the date, place and time of that meeting; and
- (d) informing the member that the member may do either or both of the following:
  - (i) attend and speak at the meeting;
  - (ii) submit to the Council at or before the date of that meeting written representation relating to the resolution.

**5.11.3** Subject to section 50 of the Act (which requires the rules of natural justice to be complied with in handling disputes involving members), the Council must:

- (a) give to the member mentioned in sub-clause 5.11.1 an opportunity to make oral representations; and
- (b) give due consideration to any written representations submitted to the Council by that member at or before the meeting; and
- (c) by resolution decide whether to confirm or to revoke the resolution of the Council made under sub-clause 5.11.1.

**5.11.4** If the Council confirms a resolution under sub-clause 5.11.3, the Secretary must, within seven (7) days after that confirmation, by written notice inform the member of that confirmation and of the member's right of appeal under Clause 5.12.

**5.11.5** A resolution confirmed by the Council under sub-clause 5.11.3 does not take effect:

- (a) until the end of the period within which the member is entitled to appeal against the resolution if the member does not exercise the right of appeal within that period; or
- (b) if within that period the member exercises the right of appeal – unless and until the Friends confirms the resolution in accordance with sub-clause 5.12.4.

## **5.12 Rights of Appeal for Disciplined Member**

**5.12.1** A member may appeal to the Friends in a special general meeting against a resolution of the Council that is confirmed under sub-clause 5.11.3, within seven (7) days after notice of the resolution is served on the member, by lodging a written appeal with the Secretary to that effect.

**5.12.2** On receipt of a notice under sub-clause 5.12.1, the Secretary must notify the Council which must call a special general meeting of the Friends to be held within twenty-one (21) days after the date when the Secretary received the notice or as soon as possible after that date.

**5.12.3** Subject to section 50 of the Act, at a special general meeting of the Friends called under sub-clause 5.12.2:

- (a) no business other than the question of the appeal may be transacted; and
- (b) the Council and the member must be given the opportunity to make representations in relation to the appeal orally or in writing, or both; and
- (c) the members present must vote by secret ballot on the question of whether the resolution made under sub-clause 5.11.3 should be confirmed or revoked.

**5.12.4** If the meeting passes a special resolution in favour of the confirmation of the resolution made under sub-clause 5.11.4 that resolution is confirmed.

## **6 Council of the Friends**

### **6.1 Role and Powers of Council**

The Council, subject to the Act and Regulations, the Constitution and any resolutions passed by the Friends at meetings of the Friends:

- (a) controls and manages the affairs of the Friends;
- (b) may exercise all functions that may be exercised by the Friends other than those that are required to be exercised by the Friends at general meetings;
- (c) has power to perform all acts and do all things that appear to the Council to be necessary or desirable for the proper and effective management of the affairs of the Friends, including, but not limited to, the administration of the Public Fund in accordance with the environmental purposes and objectives of the Friends; and
- (d) may invite Friends or other interested parties to attend Council meetings where appropriate.

### **6.2 Composition of Council**

The Council shall consist of both elected and ex-officio members. Elected members must be financial members of the Friends and shall be elected at annual general meetings of the Friends.

### **6.2.1 Elected Members of Council**

Elected members shall comprise:

- (a) President;
- (b) Vice-President
- (c) Secretary
- (d) Treasurer
- (e) Five (5) ordinary Council Members.

Only elected members may vote at Council meetings.

### **6.2.2 Ex-officio Members of Council**

- (a) The immediate Past President of the Friends, and being a financial member of the Friends, shall be an ex-officio member of the Council.
- (b) The following ANBG staff, holding the following or equivalent positions, shall be ex-officio members of Council:
  - (i) the Executive Director;
  - (ii) the General Manager;
  - (iii) the Friends' Liaison Officer;
  - (iv) the Staff Representative.

## **6.3 Executive Committee of Council**

### **6.3.1 Composition of Executive Committee**

The Executive Committee of Council shall comprise the:

- (a) President;
- (b) Vice-President;
- (c) Secretary;
- (d) Treasurer.

### **6.3.2 Role of Executive Committee**

The Executive Committee shall:

- (a) administer the day-to-day business of the Friends between Council meetings; and
- (b) if a matter is urgent, and must be decided before the next meeting of Council, seek Council members' views via Out of Session Meetings (see sub-clause 7.1.8).

### **6.3.3 Duties of Executive Committee Members**

#### **6.3.3.1 President**

The President:

- (a) holds office on the terms and conditions, and with the powers, duties and authorities, as determined by the Council. The exercise of those powers and authorities and the performance of those duties by the President are subject at all times to the control of the Council; and
- (b) is the Chairperson of any general meeting of the Friends and for any Council meeting.

#### **6.3.3.2 Vice-President**

In the President's absence, the Vice-President is the Chairperson for any general meeting and any Council meeting.

### **6.3.3.3 Secretary**

The Secretary must:

- (a) maintain the register of members in accordance with clause 5.6;
- (b) subject to the Act and this Constitution, provide members with access to the register of members, the minutes of general meetings and other relevant books and documents;
- (c) keep minutes of:
  - (i) all elections and appointments of Council members;
  - (ii) the names of Council members present at Council meetings or meetings of the Friends;
  - (iii) all proceedings of Council meetings and meetings of the Friends.

### **6.3.3.4 Treasurer**

The Treasurer must:

- (a) collect and receive all amounts owing to the Friends and make all payments authorised by the Council;
- (b) keep correct accounts and books showing the financial affairs of the Friends with full details of receipts and expenditure connected with the activities of the Friends;
- (c) ensure that the accounts and books showing the financial affairs of the Friends are audited and presented to the annual general meeting within the time and the manner prescribed by Part 5 of the Act; and
- (d) notify the Council if anyone fails to pay moneys due in accordance with this Constitution.

## **6.4 Election of Council Members**

### **6.4.1 Nominations**

Nominations of candidates for election to Council must be:

- (a) made in writing, signed by two members of the Friends and be accompanied by the written consent of the candidates; and
- (b) given to the Secretary not less than seven (7) days before the date fixed for the annual general meeting at which the election is to take place.

### **6.4.2 Executive Committee**

- (a) If only one nomination for an Executive Committee position on Council is received at the annual general meeting, that candidate is taken to be elected.
- (b) If no written nomination is received for an Executive Committee position, nominations may be put forward at the annual general meeting.
- (c) If no nomination for an Executive Committee position is received at the annual general meeting, the vacant Executive Committee position on the Council is taken to be a vacancy.
- (d) If more than one (1) nomination is received for an Executive Committee position, a secret ballot will be held at the annual general meeting.

### **6.4.3 Ordinary Council Members**

- (a) If the number of nominations equals the number of vacancies for ordinary Council positions those candidates are taken to be elected.
- (b) If fewer nominations are received than the number of vacancies, nominations may be put forward at the annual general meeting.
- (c) If more nominations are received than the number of vacancies for ordinary Council positions, a secret ballot will be held at the annual general meeting.
- (d) If fewer than the number of vacancies for ordinary Council members are filled a casual vacancy/vacancies will occur.

### **6.4.4 Voting**

- (a) Voting shall be by a majority vote by those present at an annual general meeting.
- (b) There will be no proxy voting.

### **6.5 Terms of Office**

**6.5.1** Members of Council shall be elected for a term of two (2) years.

**6.5.2** A person shall not hold the office of President for more than two (2) consecutive terms.

### **6.6 Casual Vacancies**

Council may appoint a member of the Friends to fill a vacancy on Council, and the member appointed shall hold office until the conclusion of the next annual general meeting after the date of appointment. A person filling a casual vacancy shall have all the rights of an elected member of Council.

### **6.7 Vacation of Office**

**6.7.1** A person may resign as a member of Council by notice in writing to the Council. Any such resignation shall have effect from the time it is received by the President and may not be withdrawn except with the consent of Council.

**6.7.2** A person shall cease to be a member of Council if he/she:

- (a) dies;
- (b) resigns from his or her office in writing addressed to the Council;
- (c) is removed from office by resolution of Council;
- (d) becomes insolvent or under administration;
- (e) suffers from mental or physical incapacity;
- (f) is convicted of an offence referred to in section 63(1) of the Act after taking office, or it comes to the Council's attention that he or she was convicted, or released from imprisonment in respect of such an offence, within five (5) years immediately preceding his or her appointment as a member of Council;
- (g) is absent without the consent of the Council from all meetings of Council held during the period of six (6) months.

## **6.8 Removal of Council Members**

The Friends in general meeting may by resolution, subject to section 50 of the Act, remove any member of Council before the end of the member's term of office.

## **6.9 Delegation by Council**

**6.9.1** The Council may delegate to a member of the Council or a sub-committee any of its powers and functions other than:

- (a) this power of delegation; or
- (b) a duty imposed on the Council by the Act or any other law.

**6.9.2** The delegation must be in writing and may be subject to the conditions and limitations the Council considers appropriate.

**6.9.3** The Council may, in writing, revoke a delegation wholly or in part.

## **6.10 Non Pecuniary Role of Council Members**

No member of Council shall be appointed to a salaried position of the Friends.

## **7 Meetings**

### **7.1 Meetings of Council**

#### **7.1.1 Meeting Frequency**

The Council shall meet as often as may be required to conduct the business of the Friends, a meeting shall be held within twenty-eight (28) days after each annual general meeting.

#### **7.1.2 Notice of Meetings**

- (a) Oral or written notice of a meeting of the Council must be given by the Secretary to each member of the Council at least seven (7) days (or any period that may be unanimously agreed on by the members of the Council) before the time appointed for holding the meeting.
- (b) Notice of a meeting given must specify the general nature of the business to be transacted at the meeting, and no business other than that business may be transacted at the meeting, except business that the Council members present at the meeting unanimously agree to treat as urgent business.

#### **7.1.3 Conduct of Meetings**

The Chairperson at meetings shall be the President, or in the President's absence the Vice-President, or in their absence, a nominee of Council.

#### **7.1.4 Quorum**

- (a) Any five (5) elected members of the Council constitutes a quorum for the transaction of the business of Council.
- (b) No business may be transacted by the Council unless a quorum is present and, if within half an hour after the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the

same place and at the same hour of the same day in the following week.

- (c) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting is dissolved.

#### **7.1.5 Voting**

- (a) Decisions shall be made by majority vote of elected members of the Council present at the meeting.
- (b) Each member of Council present at the meeting (including the person presiding at the meeting) is entitled to one (1) vote but, if the votes on any question are equal, the person presiding may exercise a second or casting vote.

#### **7.1.6 Conflict of Interest**

Where a member of Council who is aware that he or she has a direct or indirect material personal interest, whether pecuniary or not, in a matter being considered or about to be considered at a meeting to which Friends may be a party, the member must:

- (a) as soon as the interest becomes apparent to the member, disclose the nature and extent of the interest to Council; and
- (b) not take part in making decisions with respect to the matter or proposed matter unless Council otherwise determines, nor should he or she participate in the deliberations of the matter.

This clause does not apply to a material personal interest that:

- (a) exists only because the member belongs to a class of persons for whose benefit the Friends is established; or
- (b) the member has in common with all, or a substantial proportion of, the members of the Friends.

#### **7.1.7 Minutes**

Minutes of all meetings of the Council shall be kept by the Secretary.

#### **7.1.8 Out of Session Meetings**

- (a) In the event of a decision of the Council being required urgently between its meetings, the Chairperson, or at his or her direction, another person, may canvass the opinions of Council members in writing or otherwise as he or she may think fit and shall formulate a draft resolution and circulate it to each member of the Council.
- (b) The results of that canvass shall be a resolution of the Council as soon as a simple majority of elected Council members indicate their agreement to the Chairperson or other person delegated that role by the Chairperson, as the case may be.
- (c) The resolution and details of votes cast by each member of the Council shall be sent in written form to each member of the Council as soon as practicable following voting and recorded in the minutes of the next meeting of the Council.

## **7.2 Meetings of the Friends (Annual General and Special General Meetings)**

### **7.2.1 Annual General Meetings**

- (a) The Friends shall, in each year, hold an annual general meeting.
- (b) The annual general meeting shall be held on such day, being not later than five (5) months after the close of the financial year of the Friends (30 June), as the Council may determine.
- (c) The annual general meeting shall be in addition to any other meetings that may be held in the same year, and shall be specified as such in the notice convening it.
- (d) The ordinary business of the annual general meeting shall be:
  - (i) to confirm the minutes of the last annual general meeting and of any general or special general meeting held since that meeting;
  - (ii) to receive reports from Council on the activities of the Friends during the preceding financial year;
  - (iii) to receive and consider the audited statement of accounts and reports from the preceding financial year that are required under the Act; and
  - (iv) to elect members of the Council.
- (e) The annual general meeting may transact special business of which notice is given in accordance with this Constitution.
- (f) The provisional agenda of the annual general meeting shall include an item under which any other business may be raised by those present.

### **7.2.2 Special General Meetings**

- (a) The Council may by majority resolution call a special general meeting to deal with such matters raised for consideration as may be determined by the Council.
- (b) A special general meeting shall be called by the Secretary on the written request for such meeting signed by twenty-five (25) members or five (5) per cent, whichever is the fewer, of financial voting members of the Friends.
- (c) A requisition of members for a special general meeting:
  - (i) must be in writing and state the purpose or purposes of the meeting and any resolutions proposed; and
  - (ii) must be signed by the members making the requisition; and
  - (iii) must be lodged with the Secretary; and
  - (iv) may consist of several documents in a similar form, each signed by one (1) or more of the members making the requisition.
- (d) A special general meeting must be called as nearly as practicable in the same way that ordinary general meetings are called.

### **7.2.3 Notice of Meetings**

The Council shall give members at least twenty-one (21) days notice in writing of the provisional agenda, place, day and time for an annual general or special general meeting.

#### **7.2.4 Conduct of Meetings**

- (a) The Chairperson shall be the President, or in the President's absence the Vice-President, or in their absence, a nominee of Council at an annual general or special general meeting.
- (b) Only matters for which notice of the proposed resolution has been given may be considered at an annual general or special general meeting.

#### **7.2.5 Quorum**

- (a) A quorum shall be twenty-five (25) financial voting members of the Friends.
- (b) No business shall be transacted at annual general or special general meetings unless a quorum is present and, if within half an hour after the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same place and at the same hour of the same day in the following week.
- (c) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting is dissolved.

#### **7.2.6 Voting**

- (a) Voting on resolutions at an annual general or special general meetings shall be by show of hands unless before the vote is taken a motion is carried by twenty-five percent (25%) of financial voting members present that request a secret ballot.
- (b) All members will have one (1) vote, except household, special interest groups and organisational members, who may have up to two (2) votes if there are two or more representatives at a meeting.
- (c) decisions shall be by a majority vote by voting members present, and if the votes on any question are equal, the person presiding may exercise a second or casting vote.
- (d) There shall be no proxy voting.

#### **7.2.7 Minutes**

Minutes of annual general and special general meetings shall be kept by the Secretary.

### **8 Patron/Vice Patron**

#### **8.1 Appointment of Patron/Vice Patron**

- (a) The Council may, following consultation and agreement with the Executive Director, appoint a patron for an agreed term to assist with advancing the purposes and objectives of the Friends.
- (b) The Council may, following consultation and agreement with the Executive Director, appoint a vice-patron for an agreed term to assist the patron with advancing the purposes and objectives of the Friends.
- (c) The Council may, with the agreement of the patron or vice-patron, extend the term of their appointment for another agreed term.

## **9 Public Officer**

### **9.1 Appointment of Public Officer**

**9.1.1** The Friends shall appoint, by resolution of the Council, a person resident in the Australian Capital Territory to be its Public Officer and shall fill any vacancy that may for any reason occur in such office.

**9.1.2** An act of the Public Officer will not be taken to be invalid only because:

- (a) there is a defect in the Public Officer's appointment;
- (b) the Public Officer was not eligible to be Public Officer by virtue of clause 9.2;
- (c) the office of Public Officer was, at the time of the act, taken to be vacant pursuant to clause 9.4.

The Public Officer may also be a member of Council and hold another position on Council, and be entitled to attend meetings of the Council and vote, but if not a member of the Council will be entitled to attend meetings but have no right to vote.

### **9.2 Eligibility for Public Officer**

The Public Officer must be:

- (a) at least eighteen (18) years of age;
- (b) a permanent resident in the Australian Capital Territory.

### **9.3 Duties of Public Officer**

The Public Officer shall be responsible to Council for meeting the requirements of the Public Officer under the Act which includes being the person:

- (a) with whom the Registrar General corresponds;
- (b) on whom documents are served;
- (c) having the power to sign documents on behalf of the Friends; and
- (d) responsible for compliance with the Act.

### **9.4 Grounds for Office Becoming Vacant**

The office of Public Officer becomes vacant if the person holding that office:

- (a) dies;
- (b) resigns his or her office in writing addressed to the Council;
- (c) is removed from office by resolution of Council;
- (d) becomes insolvent or under administration;
- (e) suffers from mental or physical incapacity;
- (f) is convicted of an offence referred to in section 63(1) of the Act after taking office, or it comes to the Council's attention that he or she was convicted, or released from imprisonment in respect of, such an offence within the five (5) years immediately preceding his or her appointment as Public Officer;
- (g) ceases to be a resident of the Australian Capital Territory;
- (h) ceases to be a member of the Friends.

If the office of Public Officer becomes vacant, the Council will appoint a replacement within fourteen (14) days.

## **9.5 Termination of Appointment**

Notwithstanding the provisions of the Act, the Friends may terminate the appointment of the Public Officer by resolution of the Council.

## **10 Financial Matters**

### **10.1 Financial Year**

The financial year means the twelve (12) month period ending on 30 June each year.

### **10.2 Source of Funds**

The funds of the Friends may be derived from annual membership fees, donations, fund-raising activities, grants, interest and any other sources approved by the Council of the Friends by resolution at a meeting of the Council.

### **10.3 Management of Funds**

**10.3.1** The Friends must open and maintain an account with a financial institution from which all expenditure of the Friends is withdrawn and into which all of the Friends' revenue is deposited.

**10.3.2** Subject to any restrictions imposed by a general meeting of the Friends, the Council may approve expenditure on behalf of the Friends.

**10.3.3** The Council may authorise the Treasurer to expend funds on behalf of the Friends (including by electronic funds transfer) up to a specified limit without requiring approval from the Council for each item on which the funds are expended.

**10.3.4** All cheques, electronic transfers, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed/authorised by two Council members authorised by Council to do so.

**10.3.5** With the approval of the Council, the Treasurer may maintain a cash float provided that all money paid from or paid into the float is accurately recorded at the time of the transaction.

**10.3.6** The Treasurer will ensure that:

- (a) the Friends maintain proper accounting records;
- (b) all moneys received by the Friends are deposited as soon as practicable and without deduction to the credit of the Friends' bank accounts;
- (c) moneys received from sources not eligible for tax deductible status, such as bequests and sponsorship, are not directed to the Friends' Public Fund; and
- (d) a receipt is issued as soon as practicable after receiving moneys.

**10.3.7** The Friends will be responsible for meeting the costs of activities that are carried on in the name of the Friends, provided that the Council has approved the conduct of such activities, and has agreed to meet the costs of them.

- 10.3.8** Nothing in this Constitution will prevent the payment in good faith to a person, whether that person is a Council member or otherwise:
- (a) for goods supplied in the ordinary and usual way of recovery of expenses; and
  - (b) as repayment for out-of-pocket-expenses.
- 10.4 Financial Records**
- 10.4.1** The Friends must keep financial records that:
- (a) correctly record and explain its transactions, financial position and performance; and
  - (b) enable financial statements to be prepared as required by the Act.
- 10.4.2** The Friends must retain the financial records for seven (7) years after transactions covered by the records are completed.
- 10.4.3** The Treasurer must keep in his or her custody, or under his or her control:
- (a) the financial records for the current financial year; and
  - (b) any other financial records as authorised by Council.
- 10.5 Financial Statements**
- 10.5.1** For each financial year, the Council must ensure that the requirements under the Act relating to the financial statements of the Friends are met.
- 10.5.2** Without limiting the previous sub-clause, those requirements include:
- (a) the preparation of the financial statements;
  - (b) if required, the review or auditing of the accounts;
  - (c) the certification of the financial statements by the Council; and
  - (d) the submission of the financial statements to the annual general meeting of the Friends.
- 10.6 Appointment of Auditor**
- 10.6.1** After each general meeting of the Friends, the Council will appoint a person who:
- (a) is not a member of the Council;
  - (b) has not prepared or assisted with the preparation of the accounts; and meets the requirements of the Act,
- to carry out the annual audit of the Friends' financial records for that current financial year.
- 10.6.2** The Council will take reasonable steps to ensure that the audit is completed and the auditor provides the following documents at least fourteen (14) days before the next annual general meeting, so that the documents required by section 73(1) of the Act can be provided to members:
- (a) an audited statement of the Friends' accounts for the relevant financial year; and
  - (b) a copy of the auditor's report in relation to the Friends' accounts for that year.
- 10.6.3** If the appointed auditor is unable to complete the audit for any reason (including the auditor no longer meets the requirements of clause 10.6.1), the

Council will appoint another person as auditor who meets those requirements.

- 10.6.4** A person who has completed an appointment as auditor is, subject to the Act, immediately eligible for re-appointment, provided the requirements of clause 10.6.1 are still satisfied.

## **11 Public Fund**

### **11.1 Establishment of Fund**

- (a) The Friends shall establish and maintain a public fund called the “Friends of the ANBG Public Fund” for the specific purpose of supporting the environmental purposes and objectives of the Friends of the Australian National Botanic Gardens.
- (b) The Fund is established to receive all gifts of money or property for this purpose and all moneys received because of those gifts will be credited to its bank account.
- (c) The Fund must not receive any other money or property into its account and it must comply with subdivision 30-E of the *Income Tax Assessment Act 1997*.

### **11.2 Requirements of the Fund**

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

- (a) it changes its name or the name of its Fund; or
- (b) there is a change to the membership of the management committee of the Fund; or
- (c) there has been a departure from the Model Rules for Public Funds set out in the *Guidelines to the Register of Environmental Organisations* or the provisions of clause 11 of this Constitution.

### **11.3 Ministerial Rules**

The Friends agree to comply with all rules made by the Treasurer and the Minister with responsibility for the environment to ensure that gifts made to the Public Fund are only used for the environmental purposes and objectives of the Friends.

### **11.4 Not-for-Profit**

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

### **11.5 Conduit Policy**

Any allocation of the Fund’s moneys or property to other persons or organisations will be made in accordance with the established purposes of the Friends’ Public Fund, and will not be influenced by the preference of the donor.

## **11.6 Winding-up**

If the Fund is wound up, all surplus assets are to be transferred to another Fund on the Register of Environmental Organisations that has similar purposes and objectives.

## **11.7 Reporting Requirements**

The Friends will provide within four (4) months of the end of the financial year (30 June):

- (a) statistical information requested by the Commonwealth department responsible for the environment regarding donations to the Fund; and
- (b) an audited financial statement for the Friends and its Fund, including information regarding the expenditure of Fund moneys and the management of Fund assets.

## **11.8 Rules for the Fund**

These rules are based on the Model Rules for Public Funds on the Register of Environmental Organisations and reflect the requirements of taxation policy, especially Taxation Ruling 95/27, and are as follows:

- (a) the objective of the Fund is to support the environmental purposes and objectives of the Friends;
- (b) members of the public will be invited to make gifts of money or property to the Fund for the environmental purposes and objectives of the Friends;
- (c) money from interest on donations, income derived from donated property, and money from the realisation of such property, will be deposited in the Fund;
- (d) the Friends will open and maintain a separate bank account to deposit money donated to the Fund, including interest accruing thereon, and will keep gifts to it separate from other funds of the Friends;
- (e) the Friends will issue receipts in the name of the Fund, and keep proper accounting records and use proper accounting procedures in relation to the Fund;
- (f) the Fund will be operated on a not-for-profit basis;
- (g) a committee of management (trustees) of no fewer than three persons shall administer the Fund. The committee will be appointed by the Council. A majority of members of the committee are required to be 'responsible persons' as defined by the *Guidelines to the Register of Environmental Organisations*.

## **12 Veto Power of Executive Director**

### **12.1 Exercise of Power**

If the Executive Director advises the Council in writing that a particular course of action proposed by the Friends would not be in the best interests of the Gardens, that course of action will not be pursued by the Friends.

## **13 General Matters**

### **13.1 Indemnity**

Every member of the Council, or auditor for the time being of the Friends, shall be indemnified out of the assets of the Friends against any liability incurred by the member or auditor in defending any proceedings, whether civil or criminal, in which judgement is given in favour of the member or auditor in which that member or auditor is acquitted, or in connection with any application under the Act in which relief is granted to the member or auditor by the Court in respect of any negligence, default, breach of duty or breach of trust.

### **13.2 Common Seal**

**13.2.1** The Friends must have a common seal.

**13.2.2** The common seal of the Friends must be kept in the custody of the Secretary. and shall be affixed only by resolution of the Council.

**13.2.3** A document may only be sealed with the common seal by the authority of the Council and the attaching of the common seal must be witnessed by the signature of two members of Council.

### **13.3 Record Keeping**

The Secretary must keep in their custody, or under their control, all records, books, and other documents, except financial records, relating to the Friends.

### **13.4 Inspection of Records and other Documents**

**13.4.1** The records, books and other documents of the Friends must be open to inspection at a place in the ACT, free of charge, by a member of the Friends at any reasonable time, upon reasonable notice being given by the member to the Secretary.

**13.4.2** Members may on request inspect:

- (a) the register of members;
- (b) the minutes of general meetings (annual or special); and
- (c) subject to sub-clause 13.4.3, the financial records, books and any other relevant documents of the Friends, including minutes of Council meetings.

**13.4.3** The Council may refuse to permit a member to inspect records of the Friends that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Friends.

**13.4.4** Subject to sub-clause 13.4.3, a member may make a copy of any of the other records of the Friends referred to in clause 13.4, and the Friends may charge a reasonable fee for provision of a copy of such a record.

### **13.5 By-laws**

**13.5.1** The Council may make such by-laws as it thinks fit in relation to the affairs of the Friends that are otherwise not provided for in the Constitution, and to amend and repeal by-laws from time-to-time.

**13.5.2** A by-law must:

- (a) be subject to this Constitution;
- (b) be consistent with any provision contained in the Constitution; and
- (c) when in force, be binding on all members and shall have the same effect as this Constitution.

**13.5.3** By-laws must be decided by a resolution at a meeting of the Council.

**13.5.4** A by-law that has been passed by the Council must be notified to all members as soon as is reasonably practicable after being passed.

**13.5.5** The Secretary must make all by-laws available to members upon request.

### **13.6 Amendment of Constitution**

An amendment of this Constitution shall be made by resolution at an annual general meeting or special general meeting of the Friends by at least a three-quarters majority of voting members present at the meeting after members have been given at least twenty-one (21) days notice of the proposed amendment.

### **13.7 Dissolution of Friends**

**13.7.1** The Friends may be voluntarily wound-up by special resolution. A special resolution is passed if not less than three-quarters of the members voting at a special general meeting vote in favour of the resolution.

**13.7.2** Upon a resolution being passed in accordance with sub-clause 13.7.1 of this Constitution, all assets on hand, except those of the Public Fund, shall after payment of all expenses and liabilities, be handed over to an association that has substantially the same purposes and objectives as the Friends and which is not carried on for the profit or gain of its individual members.

**13.7.3** Upon dissolution of the Friends, assets in the Public Fund shall be treated in accordance with clause 11.6.