

# **Draft Constitution**

## **Friends of the Australian National Botanic Gardens Incorporated**

**September 2024**

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# 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 auditor appointed in accordance with clause 11.6;

**Branch Head** means Branch Head responsible for management of the ANBG;

**By-laws** mean by-laws made by the Council under clause 14.4;

**Chairperson** means the Council member holding that position under sub-clause 7.3.3.1;

**Council of the Friends** means the Council comprising members referred to in clause 7;

**Executive Committee** means the Executive Committee of the Council comprising the members referred to in clause 7.3;

**Ex-officio Members of Council** means those persons referred to in clause 7.2.2;

**Financial member** means all members that have paid fees in accordance with clause 5.7(b) and Life Members;

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

**Financial records** mean the financial records referred to in clause 11.4;

**Financial statements** mean the financial statements referred to in clause 11.5;

**Friends** mean the Friends of the Australian National Botanic Garden Inc.;

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

**Gift Fund** means the fund established by the Friends of the Australian National Botanic Gardens Inc. to receive gifts and deductible contributions of money or property in accordance with clause 12;

**Meeting of the Council** means a meeting of the Council of the Friends referred to in clause 8.1;

**Meeting of the Friends** means an annual general meeting or special general meeting referred to in clause 8.2;

**Member** means a person who holds membership of the Friends either as an individual (through individual, Life or Complimentary membership) or as a member of a group or organisation as described in clause 5.2;

**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 9;

**Public Officer** means the person appointed in accordance with clause 10;

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

**Regulations** mean any regulations contained in the *ACT Associations Incorporation Regulations 2023*;

**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 member** means a financial member entitled to vote at a meeting in accordance with sub-clauses 8.2.6 (b) and (c).

## 1.2.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) the singular includes the plural and vice versa,
- (b) a reference to a law includes regulations and instruments made under the law,
- (c) a reference to a clause or sub-clause is a reference to one of the clauses or sub-clauses in this Constitution,
- (d) headings are inserted for convenience and do not affect the interpretation of this Constitution,
- (e) a reference to a meeting includes a meeting by technology where all attendees have reasonable opportunity to participate,
- (f) "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,
- (g) 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 Inc 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* 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), and
- (c) Groups and Organisations (as described in clause 5.2).

Benefits of membership shall be determined by 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 Dealing with Membership Applications**

- (a) The Secretary shall coordinate the processing of applications and must refer applications to Council for decision.
- (b) An applicant becomes a member when Council accepts an application, the appropriate membership fee is paid where applicable, and details are entered in the Register.

## **5.6 Register of Members**

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

- (a) the name, address, and where applicable the telephone number 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.

### **5.6.2** A member may apply in writing to the Secretary to restrict access to personal information of the member recorded in the register. After the request has

been considered by Council, the applicant will be advised of the decision and the reasons for the decision.

## **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**

A right, benefit or obligation that a person has because of being a member:

- (a) cannot be transferred or transmitted to another person except in accordance with sub-clauses 8.2.6 and 8.2.7, 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.

# **6. Dispute Resolution and Disciplinary Procedures**

## **6.1 Dispute Resolution**

**6.1.1** This dispute resolution procedure applies to a dispute under the Act or Constitution between:

- (a) one or more members, or
- (b) one or more members and the Council.

**6.1.2** A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 6.2 until the disciplinary procedure is completed.

**6.1.3** A member may appoint any person to act on behalf of the member in the dispute resolution procedure.

**6.1.4** Those involved in the dispute must try to resolve it between themselves within fourteen (14) days of knowing about it, or within a timeframe agreed by those involved.

**6.1.5** If those involved in the dispute do not resolve it under clause 6.1.4 they must within ten (10) days, or within a timeframe agreed by those involved:

- (a) if the matter is between one or more members, tell the Council about the dispute in writing,



- (b) agree or request that a mediator be appointed, and
- (c) attempt in good faith to settle the dispute by mediation.

**6.1.6** For disputes between members, the mediator must:

- (a) be chosen by agreement of those involved, or
- (b) where those involved do not agree, be chosen by Council.

**6.1.7** For disputes between one or more members and the Council:

- (a) the mediator must be chosen by agreement of those involved, or
- (b) where those involved do not agree, each party to the dispute will appoint their own mediator and those mediators will try to resolve the dispute.

**6.1.8** A mediator chosen under this clause:

- (a) may be a member or former member of the Friends,
- (b) must not have a personal interest in the dispute, and
- (c) must not be known to have any real or perceived bias towards or against anyone involved in the dispute.

**6.1.9** When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard, and to review any written statements,
- (b) ensure that the mediation is conducted in a manner free from bias, and
- (c) not make a decision on the dispute.

**6.1.10** Where the mediation process does not result in an agreed outcome, Council will appoint a decision maker to resolve the dispute in accordance with the *Associations Incorporation Regulations 2023*, Schedule 1 Model Rules.

**6.1.11** At the conclusion of the dispute resolution process, the decision maker will:

- (a) notify each party to the dispute in writing:
  - (I) of the decision and the reasons for the decision,
  - (II) that the dispute resolution process is completed, and
  - (III) that the decision can be appealed;
- (b) if the Council is not a party to the dispute, provide a copy of the notification to the Council.

**6.1.12** The parties to the dispute may agree to end the dispute at any time before the decision maker decides the outcome of the dispute, in which case they must notify the decision maker, and where appropriate the Council, in writing.

## **6.2 Disciplining Members**

**6.2.1** In accordance with this clause, Council may by resolution, warn, suspend or expel a member if it is considered that:

- (a) the member has breached the Constitution, or
- (b) the member's behaviour is causing, has caused, or is likely to cause harm to the Friends.

**6.2.2** At least fourteen (14) days before the Council meeting at which a resolution under clause 6.2.1 will be considered, the Secretary must notify the member in writing:

- (a) that the Council is considering a resolution to warn, suspend or expel the member,
- (b) that this resolution will be considered at a Council meeting, and the date of that meeting,
- (c) what the member is said to have done or not done,
- (d) the nature of the resolution that has been proposed, and
- (e) that the member may provide an explanation to the Council, and details of how to do so.

**6.2.3** Before the Council passes any resolution under clause 6.2.1, the member must be given a chance to explain or defend themselves by:

- (a) sending the Council a written explanation before that Council meeting, and/or
- (b) speaking at the meeting.

**6.2.4** After considering any explanation under clause 6.2.3, the Council may:

- (a) take no further action,
- (b) warn the member,
- (c) suspend the member's rights as a member for a period of no more than 12 months,
- (d) expel the member,
- (e) refer the decision to an unbiased, independent person on conditions that the Council considers appropriate (however, the person can only make a decision that the Council could have made under this clause), or
- (f) require the matter to be determined at a general meeting.

**6.2.5** The Council cannot fine a member.

**6.2.6** The Secretary must give written notice to the member of the decision under clause 6.2.4 as soon as possible.

**6.2.7** Disciplinary procedures must be completed as soon as reasonably practical.

**6.2.8** There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## **7. Council of the Friends**

### **7.1 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 Gift Fund in accordance with its principal purpose, and

- (d) may invite Friends or other interested parties to attend Council meetings where appropriate.

## **7.2 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.

### **7.2.1 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.

### **7.2.2 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) Branch Head,
  - (II) the General Manager,
  - (III) the Friends' Liaison Officer or nominee.

## **7.3 Executive Committee of Council**

### **7.3.1 Composition of Executive Committee**

The Executive Committee of Council shall comprise the:

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

### **7.3.2 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 8.1.8).

### **7.3.3 Duties of Executive Committee Members**

#### **7.3.3.1 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.

### **7.3.3.2 Vice-President**

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

### **7.3.3.3 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, and
  - (III) all proceedings of Council meetings and meetings of the Friends.

### **7.3.3.4 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.

## **7.4 Election of Council Members**

### **7.4.1 Nominations**

Nominations for Council shall be solicited among all members and:

- (a) made in writing, signed by two members of the Friends and be accompanied by the prescribed declaration form(s) completed and signed by the candidate, 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.

### **7.4.2 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.

### **7.4.3 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.

## **7.5 Terms of Office**

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

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

## **7.6 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.

## **7.7 Vacation of Office**

**7.7.1** 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.

**7.7.2** A person shall cease to be a member of Council if the member:

- (a) dies,
- (b) resigns from their office in writing addressed to the Council,
- (c) is removed from office by resolution of Council,
- (d) becomes insolvent or under administration,
- (e) is not physically or mentally fit to exercise the functions of office,
- (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 the member was convicted, or released from imprisonment in respect of such an offence, within five (5) years immediately preceding the member's appointment to Council,
- (g) is absent without the consent of the Council from all meetings of Council held during the period of six (6) months.

## **7.8 Removal of Council Members**

The Friends in either an annual general meeting or special general meeting may

by resolution, subject to section 50 of the Act (rules of natural justice), remove any member of Council before the end of the member's term of office.

## **7.9 Delegation by Council**

**7.9.1** 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.

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

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

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

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

# **8. Meetings**

## **8.1 Meetings of Council**

### **8.1.1 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.

### **8.1.2 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.

### **8.1.3 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.

### **8.1.4 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.

### **8.1.5 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.

### **8.1.6 Conflict of Interest**

Where a member of Council becomes aware of 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 the member 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.

### **8.1.7 Minutes**

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

### **8.1.8 Out of Session Meetings**

- (a) In the event of a decision of the Council being required urgently between its meetings, the Chairperson, or at their direction, another person, may canvass the opinions of Council members in writing or otherwise as the member 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.

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

### **8.2.1 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:
  - (l) to confirm the minutes of the last annual general meeting and of any 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.

### **8.2.2 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) percent, whichever is the fewer, of 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 annual general meetings are called.

### **8.2.3 Notice of Meetings**

The Council shall give members at least twenty-one (21) days notice in writing of:

- (a) the provisional agenda, place, day and time for an annual general or special general meeting,
- (b) if the meeting is to be held in two or more places, the technology that will be used to facilitate this,
- (c) if applicable, any special resolution to be proposed and the words of that resolution, and
- (d) the form approved for the appointment of a proxy.

### **8.2.4 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.

### **8.2.5 Quorum**

- (a) A quorum shall be twenty-five (25) 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.

### **8.2.6 Voting**

- (a) Voting at an annual general or special general meeting shall be decided by:
  - (I) a show of hands, or
  - (II) a secret ballot if before the vote is taken a motion is carried by twenty-five percent (25%) of voting members requesting this form of vote.
- (b) Members with Individual or Life Membership will have one vote if present at the meeting or by proxy.
- (c) Members from each Household, Group or Organisation (as described in clause 5.2) will have up to two votes if present at the meeting or by proxy.
- (d) Before a vote is taken, the Chairperson must state whether any proxy votes have been received.
- (e) No member may hold more than 5 proxies.
- (f) Decisions shall be by majority vote, and if votes are divided equally on any question, the Chairperson may exercise a second or casting vote.

### **8.2.7 Appointment of a Proxy**

- (a) A voting member is entitled to appoint another voting member as proxy by notice given in writing to the Secretary no later than twenty-four (24) hours before the time of the meeting for which the proxy is appointed.
- (b) An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
  - (I) the member's name and address,
  - (II) the proxy's name and address,
  - (III) the meeting at which the appointment may be used, and
  - (IV) directions on how to vote, if any.
- (c) A proxy appointed to attend and vote for a member does not have the authority to vote at a meeting while the member is at the meeting.

### **8.2.8 Minutes**

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

## **9. Patron/Vice Patron**

### **9.1 Appointment of Patron/Vice Patron**

- (a) The Council may, following consultation and agreement with the Branch Head, 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 Branch Head, 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.

## **10. Public Officer**

### **10.1 Appointment of Public Officer**

**10.1.1** 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.

**10.1.2** 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 10.2,
- (c) the office of Public Officer was, at the time of the act, taken to be vacant pursuant to clause 10.4.

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.

### **10.2 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.

### **10.3 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.

### **10.4 Grounds for Office Becoming Vacant**

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

- (a) dies,
- (b) resigns their office in writing addressed to the Council,

- (c) is removed from office by resolution of Council,
- (d) becomes insolvent or under administration,
- (e) is not physically or mentally fit to exercise the functions of office,
- (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 they were convicted, or released from imprisonment in respect of, such an offence within the five (5) years immediately preceding their 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.

## **10.5 Termination of Appointment**

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

## **11. Financial Matters**

### **11.1 Financial Year**

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

### **11.2 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.

### **11.3 Management of Funds**

- 11.3.1** The Friends must open and maintain an account with a bank from which all expenditure of the Friends is withdrawn and into which all of the Friends' revenue is deposited.
- 11.3.2** Subject to any restrictions imposed by a general meeting of the Friends, the Council may approve expenditure on behalf of the Friends.
- 11.3.3** 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.
- 11.3.4** Electronic transfers must be authorised by two (2) Executive members of Council.
- 11.3.5** 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.
- 11.3.6 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' Gift Fund, and
- (d) a receipt is issued as soon as practicable after receiving moneys.

**11.3.7** 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.

**11.3.8** 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.

## **11.4 Financial Records**

**11.4.1** 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.

**11.4.2** The Friends must retain the financial records for seven (7) years after transactions covered by the records are completed.

**11.4.3** The Treasurer must keep within their custody, or under their control:

- (a) the financial records for the current financial year, and
- (b) any other financial records as authorised by Council.

## **11.5 Financial Statements**

**11.5.1** For each financial year, the Council must ensure that the requirements under the Act relating to the financial statements of the Friends are met.

**11.5.2** 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.

## **11.6 Appointment of Auditor**

**11.6.1** After each annual general meeting, the Council will appoint an Auditor to carry out the annual audit of the Friends' financial records for that current financial year.

**11.6.2** 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.

**11.6.3** If the appointed auditor is unable to complete the audit for any reason the Council will appoint another auditor.

**11.6.4** A person who has completed an appointment is, subject to the Act, immediately eligible for re-appointment.

## **12. Gift Fund**

### **12.1 Establishment of Fund**

The Friends shall establish and maintain a fund for the purpose of receiving gifts and deductible contributions of money or property. This shall be called the "Friends of the Australian National Botanic Gardens Inc. Gift Fund".

### **12.2 Purpose**

The purpose of the Gift Fund is the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.

### **12.3 Administration**

The Friends shall:

- (a) maintain a separate bank account to deposit all gifts and deductible contributions of money or proceeds from gifted property,
- (b) credit into that account all money received because of these gifts and deductible contributions,
- (c) not deposit any other money or proceeds from property into that account, and
- (d) issue receipts in the name of the Friends of the Australian National Botanic Gardens Inc.

### **12.4 Conduit Policy**

Any allocation of the Gift Fund's money or property to other persons or organisations will be made in accordance with the established purpose and not be influenced by the preference of the donor. The Friends will not pass a donation of money or property to other organisations, bodies or persons as a condition of the donation.

### **12.5 Winding-up**

If the Friends is wound up or if the endorsement of the Friends as a deductible gift recipient is revoked, any surplus assets of the Gift Fund remaining after payment of liabilities attributable to it, shall be transferred to a charity with a similar charitable purpose to which income tax-deductible gifts can be made.

## **13. Veto Power**

### **13.1 Exercise of Power**

If the Branch Head 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.

## **14. General Matters**

### **14.1 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.

## **14.2 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.

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

**14.3.1** The Secretary must ensure that all the records and other documents of the Friends are available for inspection by a member free of charge at a place in the ACT at a reasonable time.

**14.3.2** Members may on request given to the Secretary inspect, or request help in accessing:

- (a) the minutes of annual general meetings, special general meetings and Council meetings, and
- (b) subject to sub-clause 14.3.3, the financial records and any other relevant documents of the Friends.

**14.3.3** The Council may refuse to allow a member to inspect a record or other document if satisfied that allowing access would be prejudicial to the interests of the Friends.

**14.3.4** A member may on request given to the Secretary inspect the register of members, or request that the Secretary provide information from that register. Council may refuse or restrict this request unless satisfied that any information from the register will only be used in a manner consistent with the interests or rights of the members concerned.

## **14.4 By-laws**

**14.4.1** 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.

**14.4.2** 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.

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

**14.4.4** 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.

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

## **14.5 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.

## **14.6 Dissolution of Friends**

**14.6.1** 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.

**14.6.2** Upon a resolution being passed in accordance with sub-clause 14.6.1 of this Constitution, all assets on hand, except those of the Gift 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.