

CONSTITUTION

The Wilderness Society Ltd

ABN 18 611 229 086

ACN 611 229 086

Formed as an unincorporated association in 1976

First registered as *Tasmanian Wilderness Society Inc* on 6 Apr 1981

Changed name to *The Wilderness Society Inc* on 8 Jun 1984

Transferred incorporation to a public company limited by guarantee on 9 Mar 2016

Constitution amended ~~23 Nov 2022~~ 29 Nov 2023

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I. GENERAL

1. Name of the company

- a) The name of the company is *The Wilderness Society Ltd*.

2. Type of company

- a) TWS is a not-for-profit public company limited by guarantee.
- b) Subject to this Constitution, each Member and each Person who was a Member within 1 year of them ceasing to be a Member undertakes to contribute, on the winding up of TWS, to the property of TWS for:
 - 1) payment of debts and liabilities of TWS provided that for each Person who was a Member the debts and liabilities were contracted before they ceased to be a Member;
 - 2) payment of the costs, charges and expenses of winding up; and
 - 3) any adjustment of the rights of the contributories among themselves.
- c) The amount to be contributed under **rule 2.b)** is such amount as may be required up to \$1.

3. Replaceable rules and application of the Act

- a) This Constitution is to be interpreted subject to the Act, however, the rules that apply as replaceable rules to companies under the Act are displaced by this Constitution and do not apply to TWS except to the extent that they are repeated in this Constitution.
- b) An expression used in a rule that is defined for the purposes of the Act has the same meaning as in the Act unless the contrary intention appears in the expression used in a rule in this Constitution.

4. Definitions and interpretation

- a) In this Constitution unless it is inconsistent with the subject or context in which it is used:

ASIC means the Australian Securities and Investments Commission.

ACNC means the Australian Charities and Not-for-profits Commission.

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

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

Appointed Director means an individual appointed from time to time to the office of director of TWS in accordance with **Part V** this Constitution.

Board means some or all of the Directors acting as the board of TWS and performing the duties required of the board in accordance with the Act, the ACNC Act and the law.

Business Day means a day not being Saturday, Sunday or a public holiday on which the banks (as defined in the *Banking Act 1959*) are open for business in Tasmania.

By-laws means any rules, regulations, codes of conduct, policies and/or terms which are not inconsistent with this Constitution or the law and are intended to be binding on Members pursuant to **rule 11.b)** and, where relevant, Directors.

Constitution means this constitution as amended or supplemented from time to time.

Convenor means a Director elected or appointed from time to time to the office of Convenor in accordance with **rule 42** of this Constitution.

Delegate means an individual Member, as nominated by a Member that is a body corporate, who stands for election as a Director or who is appointed as a Director.

Director means an individual elected or appointed from time to time to the office of director of TWS in accordance with this Constitution.

Elected Director means an individual elected or appointed from time to time to the office of director of TWS in accordance with **Part V** of this Constitution.

Environment Secretary means the Secretary of the Department administered by the Minister.

Electronic Contact Address means an electronic destination such as an email address to which notices and other material from TWS can be transmitted or made available with reasonable certainty that they will be delivered to or will be accessible by the intended recipient.

Financial Member means a Member that has paid any required annual subscription in accordance with **rule 16.c)** of this Constitution.

Member means a member of TWS in accordance with **part II** of this Constitution.

Members' Forum means a forum of Members established in accordance with **rule 26** of this Constitution.

Minister means the minister of the Commonwealth of Australia with responsibility for the environment.

Modified Consensus means a decision making process for substantive matters where:

- (1) all individuals entitled to decide on a matter and who vote on the matter seek, by consensus, to come to unanimous agreement; provided that;
- (2) where agreement on a matter cannot be reached unanimously, consideration must be given to deferring the decision and to subjecting the issue to further debate or handing the matter to a suitably constituted committee or working group that can work in

- detail through the issues and recommend solutions which process may result in a consensus decision; but
- (3) if after the actions of (2) are considered a procedural vote to suspend consensus is called for and seconded the procedural vote must be put to the meeting; and
 - (4) if at least $\frac{3}{4}$ of the individuals who are entitled to and who vote on the matter, rounded up to the nearest whole number if that number is not a whole number, agree then consensus is suspended; then:
 - (a) if the original substantive motion is put and seconded;
 - (b) the matter may be debated further but must then be put for decision; and
 - (c) the matter will be accepted by modified consensus if at least $\frac{3}{4}$ of the individuals who are entitled to vote on the matter and who vote, rounded up to the nearest whole number if that number is not a whole number, vote in favour of the matter.

Objects means the objective of TWS specified in **rule 7**.

Officer has the same meaning as in the Act.

Patron, if TWS has one, means the patron of the company appointed under **rule 48**.

Person means an individual and any partnership, association, body or entity whether incorporated or not.

Presiding Member means the individual who is not the Convenor or a Director who chairs a general meeting in accordance with **rule 21**.

Public Fund means the fund operated in accordance with **rule 60**.

Representative means an individual, as advised by a Member that is a body corporate to the Secretary from time to time, who is appointed as a representative to exercise all or any of the powers that the Member may exercise:

- (1) at a meeting of TWS including of the Members' Forum; or
- (2) by direct vote for a resolution or ballot for an election in accordance with **rules 24 & 32**; provided
- (3) the appointment may be for a particular meeting or a particular period of time or may be a standing one; and
- (4) more than 1 Representative may be appointed but only 1 Representative may exercise the Member's rights at any one time.

Secretary means any individual who is appointed by the Board in accordance with **rule 47** to perform the duties of company secretary of TWS.

Region means any of the following separate geographic regions:

Australian Capital Territory and New South Wales;
Queensland;
Northern Territory and South Australia;

Tasmania;
Victoria; and
Western Australia.

Register means the register of Members pursuant to the Act.

Tax Act means the *Income Tax Assessment Act 1997(Cth)* and related legislation.

Treasurer means the Treasurer of the Commonwealth of Australia or other minister with responsibility for registered environmental organisations.

TWS means *The Wilderness Society Ltd (ACN 611 229 086)*.

Wilderness Society Group means the organisations listed in **rule 10.b)** with objects that focus on protecting, promoting and restoring wilderness and natural processes across Australia, that share *Wilderness Society* as common elements in their names and that act cohesively and cooperatively in mutual pursuit of their objects.

Year means the period between the close of an annual general meeting and the close of the next annual general meeting.

- b) A Member is taken to be present at a general meeting if the Member is present in person or by Representative or by proxy or by direct vote. The relevant individual may be present physically at the relevant location or, when applicable, present via relevant technology including via the technology used for a virtual meeting.
- c) A reference in a rule in general terms to a person holding or occupying a particular position or office includes a reference to any person who occupies or performs the duties of that position or office for the time being.
- d) In this Constitution, the following rules of interpretation apply unless the context requires otherwise:
 - 1) a gender includes all genders;
 - 2) singular includes plural and vice versa;
 - 3) where a word or phrase is defined, its other grammatical forms or parts of speech have corresponding meaning;
 - 4) a reference to a rule or sub-rule is to a rule or sub-rule of this Constitution and includes any further embedded content where applicable;
 - 5) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislation substituted for it and any regulations and statutory instruments issued under it; and
 - 6) the words 'writing' and 'written' include any mode of representing or reproducing words, figures, drawings or symbols in a visible or communicable form.

- e) Cross references to rules in this Constitution are for convenience only. A cross reference in a particular rule identifies another rule that impinges on the interpretation of the particular rule in a key way. Not all rules that may affect the interpretation of the particular rule are cross referenced.
- f) Headings, bold type and italics are for convenience only and do not affect the interpretation of this Constitution.

5. *Actions authorised under law*

- a) Where the Act authorises a company to do any matter or thing if so authorised by its constitution, TWS is taken by this rule to be so authorised or permitted to do that matter or thing.
- b) Where the ACNC Act authorises a body corporate registered under the ACNC Act to do any matter or thing if so authorised by its constitution, TWS is taken by this rule to be so authorised or permitted to do that matter or thing provided TWS is registered under the ACNC Act.

6. *Exercise of powers*

- a) Where this Constitution uses the word ‘may’ in providing that a person or body may do a particular act or thing, then whether the act or thing is done or not is at the discretion of the person or body.
- b) Where this Constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken to include a power:
 - 1) exercisable in the like manner and subject to any like conditions to repeal, rescind, revoke, amend or vary that act or thing; and
 - 2) to do the act or thing from time to time.
- c) Where this Constitution confers a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.
- d) Other than in respect of Directors, where this Constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
 - 1) to appoint a person to act in the office or position until a person is appointed to the office or position;
 - 2) subject to any contract between TWS and the relevant person and any applicable industrial law, to remove or suspend with or without cause any person appointed; and
 - 3) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.

- e) Where this Constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- f) Where this Constitution confers a power on a person or body to delegate a function or a power:
 - 1) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
 - 2) the delegation may be either general or limited in any manner provided in the terms of delegation;
 - 3) the delegation may be to a specified person or may be to any unspecified person from time to time holding, occupying or performing the duties of a specified office or position;
 - 4) the delegation may include the power to delegate;
 - 5) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
 - 6) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body that delegated the function or power.

7. Objects

- a) The principal Object of TWS is protecting, promoting and restoring wilderness and natural processes across Australia for the survival and ongoing evolution of life on Earth.
- b) For the purpose of furthering the principal Object, the additional Objects of TWS are to:
 - 1) work with the Wilderness Society Group, other Members and supporters to develop shared goals and strategies and to coordinate and focus work on agreed goals;
 - 2) run national programs to foster the reservation, preservation and protection of wilderness and nature, including from the impacts of climate change;
 - 3) act cohesively and cooperatively within any constraints of the law in the facilitation of, mutual support of, and with mutual respect for, other organisations involved in the Wilderness Society Group and other organisations formed for similar purposes as the Objects both for administrative advantage and for strategic operational benefit in pursuit of the Objects;

- 4) work with other parties with interests in land, water and marine environments, conservation and resource use to develop mutually supported policies, positions, agreements and statutes;
- 5) educate the community on wilderness and nature conservation and the benefits arising from wilderness and nature protection;
- 6) research environmental and related issues;
- 7) promote ideas and actions that enhance humanity's understanding, enjoyment and protection of the natural environment;
- 8) operate a Public Fund, called *The Wilderness Fund*, that will accept donations of money or property for the environmental objectives of TWS in compliance with subdivision 30-E of the Tax Act; and
- 9) doing anything ancillary or incidental to the Objects.

8. Powers

- a) TWS must act in ways and matters consistent with the direct and indirect pursuit of its Objects and may act in ways and matters incidental to its Objects and in ways that, under the Act, a company may exercise, take or engage in if authorised by its constitution. In pursuing the Objects, TWS may, in any manner permitted by consistent with and not prohibited by the Act and ACNC Act:
 - 1) exercise any power;
 - 2) take any action; or
 - 3) engage in any conduct or procedure.

9. Income and property

- a) The income and property of TWS must be applied only towards promoting the Objects.
- b) Subject to **rule 9.c)**, no income or property of TWS shall be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or other profit distribution, to any Member of TWS, any former Member of TWS, any Director or any former Director or to any person claiming through such a Person.
- c) Nothing in this Constitution shall prevent payment in good faith of:
 - 1) reasonable and proper remuneration to any employee of TWS;
 - 2) subject to this Constitution, reasonable and proper amounts to any Member in return for any services they render to TWS;
 - 3) interest at a rate not exceeding interest at the rate for the time being payable to TWS's bankers for money lent or that would be lent to TWS;
 - 4) reasonable and proper rent for premises leased by any Member to TWS;

- 5) reimbursement in good faith of out-of-pocket expenses incurred on behalf of TWS where such expenses have been appropriately authorised in accordance with processes as determined by the Board from time to time; and
- 6) any other sums payable under this Constitution.

II. MEMBERSHIP

10. *Members*

- a) The Members of TWS are:
 - 1) the Persons listed in the application to register TWS, subject to **rule 14**;
 - 2) the Wilderness Society Group organisations listed in **rule 10.b)** and included in the application to register TWS;
 - 3) every other Person that at the date of registration of TWS is a member of The Wilderness Society Inc and who agrees to become a Member, subject to **rule 62.a)**; and
 - 4) the Persons that are interested in the Objects of TWS that agree to become Members and that the Board in its absolute discretion admits to membership in accordance with this Constitution.
- b) The Wilderness Society Group organisations are:
 - 1) *The Wilderness Society Newcastle Incorporated*;
 - 2) *The Wilderness Society (Queensland) Inc*;
 - 3) *The Wilderness Society (South Australia) Inc*;
 - 4) *The Wilderness Society (Sydney) Inc*;
 - 5) *The Wilderness Society (Tasmania) Inc*;
 - 6) *The Wilderness Society Victoria Inc*; and
 - 7) *The Wilderness Society WA Inc*.
- c) The Board may provide for additional categories of membership on such conditions as the Board determines provided the rights of all Members shall be in accordance with **rule 11**.
- d) For all purposes, including purposes under the Act, a category of membership under this Constitution does not necessarily constitute a distinct class of Members.
- e) Unless otherwise provided by the terms of membership of a class of Members:
 - 1) all or any of the rights or privileges attached to a class may be varied, whether or not TWS is being wound up, with the consent in writing of the members of that class where at least 75% of any responses are in favour, or with the approval of a special resolution adopted at a meeting of the members of that class;

- 2) the provisions of this Constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to each meeting of the members of that class; and
 - 3) the rights of members of that class are to be taken as not being varied by the admission of further members to that class or any category, the establishment of and admission of Members into any new class or category of membership irrespective of the rights attached to that new class or category of membership, or the cessation of membership irrespective of how it occurs.
- f) The number of Members is unlimited but the number of individuals who are Members in accordance with **rule 10.a)** must be at least 50.

11. *Rights of Members*

- a) A Member has a right:
 - 1) to attend and to speak at general meetings or to have their Representative attend and speak at general meetings;
 - 2) to vote at general meetings; and
 - 3) subject to **rule 29 & 32** to be nominated to be appointed a Director or to have their Delegate nominated to be appointed a Director.
- b) Every Member shall be bound by and must comply with and observe the provisions of this Constitution and any By-laws that may be adopted by the Board and any other regulations that may be lawfully made by the Board, provided that any such By-laws that have a direct impact on Members must first be approved by Members in general meeting.

12. *Membership not transferable*

- a) A right, privilege or obligation which a Person has by reason of being a Member:
 - 1) is personal to the Member and not capable of being transferred to another Person by a Member's own act or by operation of law; and
 - 2) terminates upon the cessation of membership whether by being wound up, resignation or otherwise.

13. *Application for membership*

- a) Any eligible Person may apply for membership.
- b) An application for membership must be recorded in writing in the form the Board prescribes from time to time. The form may be in an online format. Such form must provide for an Electronic Contact Address to be provided where possible.
- c) The Board may delegate the consideration and determination of any membership application and may allow automated processes in the administration of applications.

- d) In no case shall the Directors be required to give a reason for the rejection of any application for membership.
- e) Subject to **rule 13.d)**, when a decision regarding an application for membership has been made the Secretary or other individual delegated by the Board shall send to the applicant written notice of that decision which may be executed in any reasonable electronic or online way.
- f) The acceptance of an application to be a Member is subject to payment of any fees in accordance with **rule 16** and if any such payment is not made then the Board may, in its discretion, cancel its acceptance of the application for membership of TWS.
- g) If the applicant is not admitted to membership in due course then any moneys paid by them for that membership must be returned to them in full.
- h) Subject to **rules 10.&13.g)**, an applicant becomes a Member and is entitled to exercise the rights and privileges of that membership when their name is entered in the Register.

14. *Ceasing to be a Member*

- a) A Member shall cease to be a Member:
 - 1) if the Member resigns, on the date the notice is received by TWS;
 - 2) if the Member dies;
 - 3) if the Member becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
 - 4) if the Member is an individual if the Member becomes bankrupt; or
 - 5) if the Member is a body corporate if the Member becomes insolvent, or is wound up;
 - 6) upon resolution by the Board, in any other circumstances prescribed by any additional terms of membership applicable to the Member or in the failure to satisfy any undertaking given by the Member upon them being admitted as a Member;
 - 7) upon resolution by the Board if the Member is convicted of an indictable offence;
 - 8) if the Member is expelled under **rule 15**;
 - 9) if the Member ceases to be a Financial Member (see **rule 16.c)**; or
 - 10) if the Member has not paid moneys other than annual membership fees due and payable to TWS within 60 days of a final request for payment of those moneys being sent to the Member.
- b) If any organisation in the Wilderness Society Group listed in **rule 10.b)** ceases to be a Member this rule authorises their name to be removed from **rule 10.b)** and replaced with 'Deleted (date)'.

- c) Any Member ceasing to be a Member:
 - 1) shall not be entitled to any refund, in full or part, of any fee paid in accordance with **rule 16**; and
 - 2) shall not be readmitted as a Member until any unpaid moneys outstanding at the time they ceased to be a Member are paid including any interest or other charges levied on any outstanding moneys.

15. *Disciplining of Members and dispute resolution*

- a) **Disciplining of Members** - subject to this rule the Board may resolve to expel any Member, or to suspend any Member from membership for a specified period, if the Member:
 - 1) has failed to comply with this Constitution;
 - 2) has failed to comply with any other terms of membership applicable to the Member; or
 - 3) in the opinion of the Board, has acted in a manner that renders it undesirable that the Member continues to be a Member where such action could include that the Member has acted in a manner prejudicial to the interests of TWS.
- b) If the Board passes a resolution in accordance with **rule 15.a)** to expel or suspend a Member then the Secretary must give the Member written notice:
 - 1) setting out the resolution and the grounds upon which it was based; and
 - 2) stating that the Member has 30 calendar days from the date of the notice to give written submissions to the Board in response to the resolution.
- c) If the Member gives written submissions in response to the resolution then the Board must consider those submissions at its next meeting and the Secretary must then give the Member written notice:
 - 1) as to whether or not the Board has passed a new resolution in relation to the matter; and
 - 2) if the Board does not intend to pass a new resolution, that the Member has 21 calendar days from the date of the notice to advise the Board in writing that the Member requires the matter be referred to mediation under **rule 15.e)**.
- d) If the Member does not give written submissions within the time specified in **rule 15.b)2)** or advice in writing within the time specified in **rule 15.c)2)** in response to the resolution then the Board may proceed in accordance with **rule 15.f)**.
- e) If the matter is referred to mediation under **rule 15.c)2)** then the mediation must be conducted:

- 1) subject to **rule 15.e)2)**, in such manner as the Board reasonably determines; and
 - 2) in accordance with the rules of procedural fairness, including applying the procedures in **rule 15.l)&m)** to the extent that they can be and with such changes as are necessary, as determined by the Board.
- f) Once the mediation under **rule 15.e)** is concluded or if the Member gives no advice in writing under **rule 15.c)2)** or if the Member makes no written submissions in accordance with **rule 15.b)2)** then the Board may decide whether or not to endorse the resolution under **rule 15.a)** at which time the Board may resolve to implement the resolution under **rule 15.a)** to expel the Member by removing the Member from the Register or to suspend the Member for a specified period.
- 1) If the Member is a Wilderness Society Group organisation listed in **rule 10.b)** then the resolution by the Board to expel or suspend that Member must be referred to a general meeting of Members for consideration and endorsement. If no endorsement is given by the Members at a general meeting then the Board's resolution under **rule 15.f)** has no effect.
- g) If the resolution is referred to a general meeting in accordance with **rule 15.f)1)**, the general meeting must be held within 3 months, all written submissions must be made available to all Members and the Member that is the subject of the Board's resolution has a right to address the general meeting but the Member has no voting rights in relation to the matter at the meeting. If the general meeting endorses the resolution under **rule 15.a)** it is only at that time that any resolution under **rule 15.a)** will be effective.
- h) **Dispute resolution** - the dispute resolution procedure in **rule 15.h) to m)** applies to any disputes that may arise under this constitution between 1 or more Members or 1 or more Directors and:
- 1) 1 or more Members;
 - 2) 1 or more Directors; or
 - 3) TWS.
- i) A Member must not start a dispute resolution procedure in relation to a matter which is subject to a disciplinary procedure under **rule 15.a)** until the disciplinary procedure is completed in accordance with **rule 15.f) & g)**.
- j) The parties involved in a dispute must try to resolve it between themselves within 14 days of becoming aware of the dispute.
- k) If the parties involved in the dispute do not resolve it in accordance with **rule 15.j)** then they must within 14 days:
- 1) advise the Secretary in writing about the dispute;
 - 2) agree or request that a mediator be appointed; and

- 3) attempt in good faith to resolve the dispute by mediation.
- l) The mediator must:
- 1) be agreed by the parties to the dispute; or
 - i. if the parties to the dispute do not agree then be an individual chosen by the Board;
 1. provided that if TWS is a party to the dispute then the mediator is to be chosen by the law society in the State or Territory in which TWS has its registered office.
 - 2) A mediator chosen under **rule 15.1**):
 - ii. may be a Member or former Member;
 - iii. must not have a personal interest in the dispute; and
 - iv. must not be biased towards or against any party to the dispute.
 - 3) When conducting the mediation, the mediator must:
 - v. allow the parties involved a reasonable chance to be heard;
 - vi. allow the parties involved a reasonable chance to review any written statements;
 - vii. ensure that the parties involved receive procedural fairness; and
 - viii. not make a decision on the dispute which is for the parties involved to resolve if they can.
- m) Each party to the dispute must pay an equal share of the cost of mediation.
- n) Nothing in this **rule 15** affects the rights of Members in accordance with the law.

16. *Payments by Members*

- a) The Board may determine from time to time to charge Members fees comprising annual subscriptions and specific purpose levies and charges.
- b) The Board may determine different fees for amounts charged to Members as between Members. The Board may determine that no fee is payable.
- c) Any amounts charged to Members are payable in such manner and at such times as are determined by the Board, provided that to remain financial a Member must pay any required annual subscription for the next membership year before their current membership year ceases.
- d) No part of any fee paid shall be refunded to a Member who ceases to be a Member in accordance with **rule 14**.

III. GENERAL MEETINGS

17. *Convening of a general meeting*

- a) The Board may, whenever it thinks fit, call and arrange to hold a general meeting of TWS and must call and arrange to hold an annual general meeting in accordance with the requirements of the Act as applicable to a public company that is not registered under the ACNC Act.
- b) Apart from as provided by this Constitution, a general meeting of TWS may be called and arranged to be held only as provided by the Act, as applicable to a public company that is not registered under the ACNC Act, provided that the Board may act on a request to call a general meeting from fewer Members than required by the Act, as applicable to a public company that is not registered under the ACNC Act, and must call a meeting requested by at least 1% of the Financial Members.
 - 1) Without requesting a general meeting, Members may give TWS notice of a resolution that they propose to move at a general meeting in accordance with the Act, as applicable to a public company that is not registered under the ACNC Act, except that the Board may accept such a notice that is given by fewer than 100 Financial Members.
 - i. If TWS has been given notice of a resolution in accordance with **rule 17.b)1)**, notice of the resolution is to be given to Members and the resolution is to be considered at a general meeting in accordance with this Constitution and the Act, as applicable to a public company that is not registered under the ACNC Act, except that, subject to **rule 18**, the resolution may be considered at a general meeting that is scheduled to occur within 2 months of notice of the Members' resolution being received by TWS.
- c) A general meeting of TWS may be convened to occur at 2 or more venues using any technology that gives the Members in attendance a reasonable opportunity to participate in the general meeting.
 - 1) Virtual meeting technology may be approved by the Board for use for such a general meeting of TWS provided the technology gives the persons entitled to attend the meeting, as a whole, a reasonable opportunity to participate and the technology is consistent with the requirements under the Act as applicable to a public company that is not registered under the ACNC Act.
 - i. If the general meeting is held using virtual meeting technology only, then the place of the meeting is taken to be the registered office of TWS.
- d) A general meeting convened in accordance with **rule 17.c)** is not invalidated due to a failure of the technology unless the failure arose out of conduct of an Officer which was not in good faith, or which involved wilful misconduct, gross negligence, reckless behaviour or fraud.

18. Notice of a general meeting

- a) Subject to this Constitution, at least 28 days notice of a general meeting must be given in the manner authorised by **rule 52** to each Person who is, at the date of the notice:
 - 1) a Member;
 - 2) a Director; or
 - 3) an auditor of TWS.
- b) A notice of a general meeting must specify:
 - 1) the place, date and time of the general meeting;
 - 2) subject to **rule 18.d)**, the general nature of any business to be conducted at the general meeting;
 - 3) if an item of business requires a special resolution under the Act or ACNC Act, the details of and intention to propose it; and
 - 4) if the general meeting is to be held in 2 or more places or is to be a virtual meeting only then the technology that will be used to facilitate this.
- c) Except as provided in **rule 18.d)**, no business other than that specified in the notice convening a general meeting may be transacted at that general meeting.
- d) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the general meeting includes the consideration of any annual financial report, any Directors' report, any report from the auditor, the appointment of Directors, the appointment of the auditor or the fixing of the auditor's remuneration.
- e) A Member may waive the right to receive notice of a general meeting by notice in writing to TWS.
- f) The accidental failure to give notice of any general meeting to, or the non-receipt of notice of a general meeting by, any Person entitled to receive notice will not invalidate the proceedings or any resolution passed at the general meeting.
- g) A Person's attendance at a general meeting waives any objection that that Person may have to a failure to give notice, or the giving of a defective notice, of the general meeting unless the Person at the beginning of the general meeting objects to the holding of the general meeting.
- h) Despite **rule 18.a)**, a shorter notice period is allowed for a general meeting but only in accordance with the requirements of the Act, as applicable to a public company that is not registered under the ACNC Act.

19. Cancellation or postponement of a general meeting

- a) The Board may cancel a general meeting of TWS that:
 - 1) has been convened by the Board; or

- 2) has been convened at the request of a Member or Members pursuant to **rule 17.b)** upon receipt by TWS of written notice withdrawing the requisition signed by those Members with the consequence that there are less than half the requisitioning Members remaining who still wish for the general meeting to be convened.
- b) The Board may postpone a general meeting or change the venue at which it is to be held but no business shall be transacted at any postponed general meeting other than the business stated in the notice to the Members relating to the original general meeting. If a general meeting is called and arranged to be held under **rule 17.b)**, the Board may make changes or cancel the general meeting in accordance with the relevant procedures in the Act as applicable to a public company that is not registered under the ACNC Act.
- c) Where any general meeting is cancelled or postponed or the venue for the general meeting is changed:
 - 1) the Board must make a reasonable attempt to notify in writing each Person entitled to receive notice of the general meeting of the cancellation, the change of venue or the postponement of the general meeting by any means permitted by this Constitution and in the case of the postponement of a general meeting, the new place, date and time for the general meeting; but
 - 2) any failure to notify in writing any Person entitled to receive notice of the general meeting or failure of a Person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the general meeting.

20. *Quorum at a general meeting*

- a) No business may be transacted at any general meeting unless a quorum of Members entitled to vote is present (see **rule 4.b)**) at all times during the general meeting.
- b) A quorum of Members shall be the number that is twice the number of Directors in office at the time of the meeting plus 1.
- c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - 1) the general meeting, if convened upon the requisition of Members in accordance with **rule 17.b)**, shall be dissolved; and
 - 2) in any other case:
 - i. the general meeting stands adjourned to such day, and at such time and place, as the Convenor determines or, if no determination is made by the Convenor, to the same day in the next week at the same time and place; and
 - ii. if, at the adjourned general meeting, a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting must be dissolved.

21. Chairing of a general meeting

- a) The Convenor shall preside in the role of chair at each general meeting unless:
 - 1) there is no Convenor;
 - 2) the Convenor is not present within 15 minutes after the time appointed for the general meeting or, subject to **rule 21.c)**, the time at which a quorum is present, whichever is later; or
 - 3) the Convenor is present within that time but is not willing to act in the role.
- b) When the Convenor does not preside in accordance with **rule 21.a)** then:
 - 1) the Directors present must elect as chair of the general meeting another Director who is present and willing to act; or
 - 2) if no Director willing to act is present at the general meeting, the Members and Representatives who are present in person at the general meeting must elect as chair of the general meeting a Presiding Member who must be a Member or a Representative who is present in person, is willing to act and who is entitled to vote at the general meeting.
- c) Despite anything in **rules 21.a)&b)**, if the Convenor and/or any other Director or Directors later attend a general meeting or later are willing to act as chair of the general meeting, the relevant Convenor or Director/s (elected if necessary as outlined in **rule 21.b)1)** must take over from the Presiding Member as chair of the general meeting.
- d) Subject to **rule 22**, the chair of a general meeting:
 - 1) shall ensure that all items on the agenda are dealt with, and in the sequence set out, unless the Members and Representatives who are present in person consent to the order being changed; and
 - 2) shall conduct the general meeting in a manner designed to facilitate decision making and the transaction of business.

22. Conduct of a general meeting

- a) Subject to **rules 11.&15.g)** a Member is entitled to attend and to speak at general meetings.
- b) The chair of a general meeting may at any time they consider it necessary or desirable for the proper and orderly conduct of the general meeting:
 - 1) impose a limit on the time that an individual may speak on each motion or other item of business, question or resolution being considered by the general meeting and require the business, question, motion or resolution to be put to a vote of the Members and Representatives present; and

- 2) subject to **rule 23. d)**, adopt any procedures for casting or recording votes at the general meeting whether on a show of hands, on the voices or a poll, including the appointment of scrutineers.
- c) Subject to **rules 21.d)1), 22.f) & 23.a)**, the chair of the general meeting is responsible for the order of business, procedure and conduct of the general meeting.
- d) The chair of a general meeting may take any action they consider appropriate for the safety of individuals attending the general meeting and the orderly conduct of the general meeting and may refuse admission to, or require to leave and remain out of, the general meeting any individual:
 - 1) in possession of a visual and/or sound recording device which in the opinion of the chair of the general meeting may or does cause inconvenience or disruption to the general meeting;
 - 2) in possession of an article considered by the chair of the general meeting to be dangerous, offensive or liable to cause disruption;
 - 3) who refuses to produce or permit examination of any article, or the contents of any article, in the person's possession;
 - 4) who behaves or threatens to behave in a dangerous, offensive or disruptive way; or
 - 5) who is not entitled to receive notice of the general meeting if they are not a representative of a Person entitled to receive notice of the general meeting.
- e) The chair of the general meeting may delegate powers conferred by **rule 22.d)** to any individual they think fit.
- f) Subject to **rule 4.a)** regarding Modified Consensus, the chair of a general meeting may at any time during the course of a general meeting, and must if so directed by the general meeting, adjourn from time to time and from place to place the general meeting or any business, motion, question or resolution being considered or remaining to be considered by the general meeting or any debate or discussion either to a later time at the same general meeting or to an adjourned general meeting as determined by the chair of the general meeting.
- g) No business may be transacted at any adjourned general meeting other than the business left unfinished at the general meeting from which the adjournment took place.
- h) A resolution passed at a general meeting resumed after an adjournment is passed on the day that it is passed.
- i) Where a general meeting is adjourned for 30 days or more, notice of the adjourned general meeting must be given as in the case of the original general meeting.

- j) Except as provided by **rule 22.i)**, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned general meeting, subject to **rule 19.c)**.
- k) Where a general meeting is adjourned, the Board may change the venue of, postpone or cancel the adjourned general meeting unless the general meeting was called and arranged to be held by the Members or the court in accordance with **rule 17.b)**. If a general meeting is called and arranged to be held under **rule 17.b)** then the Board may not postpone it beyond the date by which such a general meeting would be required under the Act as applicable to a public company that is not registered under the ACNC Act and may not cancel it without the consent of the requisitioning Members in accordance with the Act as applicable to a public company that is not registered under the ACNC Act.
- l) Nothing in this **rule 22** is to be taken to limit the powers conferred on the chair of a general meeting by law.

23. *Decisions at a general meeting*

- a) Questions arising at a general meeting are to be decided:
 - 1) for matters set out in the notice of meeting, subject to **rule 18.d)**, and substantive matters related to those matters by Modified Consensus of votes cast by the Members present (see **rules 4.b)&11.a)**) at the general meeting who are eligible to vote and any such decision is for all purposes a decision of the Members; and
 - 2) for procedural motions by at least a majority of votes cast by the Members present (see **rule 4.b)&11.a)**) at the general meeting who are eligible to vote and any such decision is for all purposes a decision of the Members.
- b) Subject to **rule 4.a)** regarding Modified Consensus, in the case of an equality of votes upon any proposed procedural resolution the chair of the general meeting, in addition to any deliberative vote, does not have a casting vote.
- c) At any time before a vote on a motion is taken at a general meeting, a summary of the proxy vote position and, if applicable, total direct votes received in relation to the motion must be disclosed to the meeting.
- d) A resolution put to the vote of a general meeting must be decided on a show of hands of the Members and Representatives present in person and eligible to vote (see **rule 25.1)**) unless a poll is demanded in accordance with **rule 23.e)** before the vote is taken or before or immediately after the declaration of the result of the show of hands.
 - 1) Where a general meeting is called in accordance with **rule 17.d)** Members and Representatives present in person (see **rule 4.b)**) via technology and who cannot be seen for a show of hands may cast their vote by voice or by electronic or other means approved by the chair of the general meeting.

- 2) On a show of hands all Members present in person (see **rule 4.b))** and Representatives who are not Members who are present (see **rule 4.b))** in person and eligible to vote have 1 vote. Any additional votes that any Member may be entitled to exercise shall not be exercisable on a show of hands but will be exercisable on a poll.
- e) Under **rule 23.d)** a poll may be demanded:
 - 1) by the chair of the general meeting; or
 - 2) by at least 3 Members present (see **rules 4.b)&11.a))** and having the right to vote on the resolution.
- f) A demand for a poll does not prevent the continuation of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- g) At any general meeting, unless a poll is demanded, a declaration by the chair of the general meeting that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the minutes of the proceedings of TWS which has been signed by the chair of the relevant general meeting or of the next succeeding general meeting, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- h) If a poll is demanded at a general meeting in accordance with **rule 23.d)**, it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the chair of the general meeting directs, and the result of the poll will be the resolution of the general meeting at which the poll was demanded, and an entry to that effect in the minutes of the proceedings of TWS which has been signed by the chair of the relevant general meeting or of the next succeeding general meeting, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
 - 1) Where a general meeting is called in accordance with **rule 17.c)** and a poll is demanded, Members present (see **rule 4.b))** via technology may cast their vote by informing the chair of the general meeting who will complete the poll for them in good faith on their instructions or by electronic or other means including a relevant polling system applicable for a virtual meeting as approved by the chair of the general meeting.
- i) A poll demanded at a general meeting on the election of a chair of the general meeting pursuant to **rule 21.b)2)** or on an adjournment pursuant to **rule 22.f)** must be taken immediately.
- j) A demand for a poll may be withdrawn.

24. *Voting rights at a general meeting*

- a) Subject to this Constitution, at a general meeting every Member that is entitled to vote and who is present (see **rule 4.b))** has 1 vote subject to **rule 25.1).**

- 1) Where the Board has allowed Members to cast a direct vote by electronic or postal means on a matter the voting must be done in a way that identifies that a Member has voted but with the actual vote cast by the Member secret. Subject to **rules 24.a) & 25.a)**, the Board must advise Members at the time of inviting a direct vote as to whether the result of the direct vote shall be the decision of the Members or whether the matter that has been voted on by direct vote shall also be voted on at a general meeting and the decision may be the combined result of the direct vote and the voting at the general meeting.
- b) A proxy is entitled to a separate vote for each Member the person represents, in addition to any vote they may have as a Member in their own right.
- c) An objection to the qualification of a person to vote at a general meeting:
 - 1) must be raised before or at the general meeting at which the vote objected to is given or tendered; and
 - 2) must be referred to the chair of the general meeting whose decision on the qualification to vote is final.
- d) A vote not disallowed by the chair of the general meeting under **rule 24.c)2)** is valid for all purposes.

25. Representation at a general meeting

- a) Subject to this Constitution, each Member entitled to vote at a general meeting may vote:
 - 1) in person including by Representative;
 - 2) by direct vote using electronic and/or postal means where such an option is offered by the Board; or
 - 3) by proxy.
- b) A proxy may, but need not, be a Member or a Member who is entitled to vote.
- c) A proxy may be appointed for all general meetings, or any number of general meetings, or for a particular general meeting.
- d) Unless otherwise provided in the instrument, but subject to the Act, as applicable to a public company that is not registered under the ACNC Act, an instrument appointing a proxy, subject to **rule 23.d)**, will be taken:
 - 1) to confer authority to agree to a meeting being convened by shorter notice than is required by the Act as applicable to a public company that is not registered under the ACNC Act or by this Constitution;
 - 2) to confer authority to speak to any proposed resolution on which the proxy may vote;
 - 3) to confer authority to demand, or join in demanding, a poll on any resolution on which the proxy may vote;

- 4) to appoint the chair of the general meeting as the proxy unless the Member clearly specifies another person as proxy and that person attends the general meeting;
 - 5) even though the instrument may refer to specific resolutions and may direct the proxy how to vote on those resolutions:
 - i. to vote, in a way that is consistent with any direction given by the Member on the proxy form, on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar procedural motion;
 - ii. to vote on any procedural motion, including any motion to elect the chair of the general meeting, to vacate (only in the case of a Presiding Member elected under **rule 21.b)2**) the chair or to adjourn the meeting; and
 - iii. to act generally at the meeting; and
 - 6) even though the instrument may refer to a specific meeting, to be held at a specific time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to confer authority to attend and vote at the rescheduled or adjourned meeting or at the new venue.
- e) An instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument so provides, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.
- 1) Where the instrument so directs the proxy how to vote and the person appointed as proxy is not the chair of the general meeting and the proxy does not exercise the vote when a poll is called then the chair of the general meeting is taken, before voting on the resolution closes, to have been appointed as the proxy for the purposes of voting on the resolution at the meeting and must so vote.
- f) Subject to **rule 25.i**), an instrument appointing a proxy need not be in any particular form provided it is in writing, contains the Member's name and address, TWS's name, the proxy's name or the office held by the proxy, the meetings at which the appointment may be used and either:
- 1) be signed by the appointer or the appointer's attorney; or
 - 2) be authenticated in such manner as the Board may determine.
- g) A proxy may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy, and the authority under which the instrument is signed or a certified copy of the authority, are received in or at at least 1 of the places, fax numbers or electronic addresses specified in **rule 25.h**) at least:
- 1) 48 hours prior to the meeting (or such other minimum period as may be prescribed by the Act, as applicable to a public company that is not registered under the ACNC Act, from time to time); or

- 2) such lesser period specified for this purpose in the notice calling the meeting.
- h) For the purposes of **rule 25.g)**:
- 1) the place may be TWS's registered office or other place specified in the notice and a fax number or electronic address may be the fax number or electronic address at TWS's registered office or the fax number or electronic address specified in the notice; and
 - 2) the lesser period may be any time set by the Board before the time for holding the meeting or adjourned meeting.
- i) The Board may waive all or any of the requirements of **rules 25.f)g)&h)** and in particular may, upon the production of such other evidence as the Board requires to prove the validity of the appointment of a proxy, accept:
- 1) an appointment of a proxy which is not signed and executed in the manner required by **rule 25.f)**; and
 - 2) the deposit, tabling or production of a copy, including a copy sent by facsimile or by electronic transfer, of an instrument appointing a proxy or of the power of attorney or other authority under which the instrument is signed.
- j) A vote given in accordance with the terms of an instrument appointing a proxy is valid despite the revocation of the instrument or of the authority under which the instrument was executed, if no notice in writing of the revocation has been received by TWS by the time and at 1 of the places at which the instrument appointing the proxy is required to be received under **rules 25.g)&h)**.
- k) The appointment of a proxy is not revoked if the appointer attends and participates in the general meeting but, if the appointer votes on any resolution, the proxy is not entitled to vote, and must not vote, as the appointer's proxy on the resolution.
- l) If a Member has cast a direct vote on a matter and the Board puts that matter to a general meeting for a vote then if a Member who has already cast a direct vote or their Representative or their proxy attends the general meeting:
- 1) the Member or their Representative may vote on a show of hands, see **rule 23d)1)**; but
 - 2) consistent with **rule 23d)1)**, the proxy of the Member may not vote on a show of hands; however,
 - 3) if the matter is put to a poll, they (including their Representative or their proxy) are not entitled to vote and must not vote on the matter at the general meeting. Their direct vote will be counted in the poll that is taken on the matter.
- m) The chair of a general meeting may require any person acting as a proxy to establish to the satisfaction of the chair of the general meeting that the

person is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish their identity, they may be excluded from voting in which case **rule 25.d)4)** applies unless the form of proxy indicates otherwise.

IV. MEMBERS' FORUM

26. *Establishment of Members' Forum*

- a) The Board may call a meeting of a Members' Forum as and when it determines and must call a meeting at least annually.
- b) The purpose of the Members' Forum is to provide a process for Wilderness Society Group organisations and other interested Members to provide guidance and advice to the Directors in relation to the actions in pursuit of the Objects in accordance with **rule 7**.
 - 1) The Board must receive and consider in good faith any guidance and advice arising from a Members' Forum.
 - 2) In line with the duties and obligations of Directors, the Board is not required to act on or to implement any guidance or advice from the Members' Forum.
- c) The Board must develop a charter for the Members' Forum and may amend the charter from time to time. When amending the charter the Board may seek advice from the Members' Forum.
- d) TWS will be responsible for direct costs arising from meetings of the Members' Forum but will not be responsible for costs associated with Members participating in the Members' Forum.

V. BOARD OF DIRECTORS

27. *Number of Directors*

- a) There must be not less than 4 and not more than 9 Directors.
- b) Of the Directors at any time, up to 7 may be Elected Directors and up to 2 may be Appointed Directors.

28. *Term of Directors*

- a) Subject to **rules 28.b)30.c)&31.)**, the term for an Elected Director shall be up to 3 Years but no Elected Director shall hold office for more than ~~2~~3 consecutive terms.
- b) Terms for Elected Directors shall commence at the conclusion of the annual general meeting in association with which the Director was elected and terminate no later than at the conclusion of the third annual general meeting after which the Elected Director was appointed.
- c) The term for an Appointed Director shall commence on the day determined by the Board and be for such period as the Board determines at the time of appointment up to 36 months. Prior to the conclusion of the Appointed Director's ~~first~~ term the Board may determine:

- 1) to re-appoint the Appointed Director for a second ~~and final or third~~ term as the case may be of up to 36 months; or
- 2) not to re-appoint the Appointed Director; and
- 3) if no determination is made then the term of the Appointed Director ceases at the conclusion of the first term.

29. Eligibility of Directors

- a) To be eligible to stand for appointment as or to be a Director an individual:
 - 1) must be a Financial Member;
 - 2) may be a Delegate so long as the Member for which the individual is a Delegate is a Financial Member;
 - 3) must not have been an employee of TWS or of an organisation in the Wilderness Society Group at any time during the 6 months prior to the date of their appointment;
 - 4) must not be a member of the governing body of an organisation in the Wilderness Society Group; and
 - 5) must not be subject to any circumstance in accordance with **rule 33.c)** that would result in them ceasing to be a Director once appointed.
- b) Members and Members who are Delegates who have served as Directors for a maximum period in accordance with **rule 28.a)&c)** shall be eligible for reappointment as a Director after a lapse of 3 Years from when they last held office as a Director.
- c) Of the Elected Directors, not more than 2 may have an address in the Register in the same Region. For a Delegate, the relevant address is of that of the Member for which they are a Delegate.
- d) The Elected Directors must come from at least 4 Regions as determined by the address of the Member in the Register. For a Delegate, the relevant address is that of the Member for which they are a Delegate.
- e) Appointed Directors must have skills, experience, perspectives and/or capabilities that the Directors determine from time to time are important for the Board.

30. Casual vacancies on the Board

- a) If a casual vacancy in the position of an Elected Director occurs, the Board may appoint any eligible Member or Delegate to that position, and such appointee holds office until the end of the next annual general meeting but if otherwise eligible, may stand for election in conjunction with that annual general meeting.
- b) In determining an appointment in accordance with **rule 30.a)**, the Board:
 - 1) must seek, from each Wilderness Society Group organisation in the Region where the vacancy exists, the nomination of an

- eligible individual or individuals for consideration by the Board;
and
- 2) where no Wilderness Society Group organisation exists in the Region where the vacancy exists, the Board may seek from other grouping/s of Members in that Region the nomination of an eligible individual or individuals for consideration by the Board; provided that
- 3) if no such nomination is provided to the Secretary within 28 days of the Wilderness Society Group organisation or other grouping/s of Members in the relevant Region being advised, then the Board may proceed to appoint any eligible individual.
- c) In relation to **rule 28.a)**, the period in **rule 30.a)** to the end of that next annual general meeting does not count in determining a term.

31. Rotation of Elected Directors

- a) One third of the Elected Directors shall retire each year at the conclusion of the annual general meeting. Retiring Directors, if eligible and they wish to and they are nominated, may be re-appointed in accordance with **rule 32**.
- b) If the number of Elected Directors to retire is not a whole number then the number that is one third then rounded down to the next whole number must retire from office.
 - 1) When the number of Elected Directors about to reach their term in accordance with **rule 28.a)&b)** exceeds the number determined in **rules 31a)&b)** then the Elected Directors to retire are all the Elected Directors who reach their term at the conclusion of the next annual general meeting.
- c) In determining the number to retire, Elected Directors appointed to fill casual vacancies who retire under **rule 30.a)** are not to be counted for the purposes of **rule 31.a)**.
- d) The Elected Directors to retire at an annual general meeting are those who have been longest in office since their election, but, subject to **rule 31.b)1)**, as between persons who became Elected Directors on the same day, the Elected Directors to retire shall (unless they otherwise agree among themselves) be determined by lot.
- e) The Elected Directors to retire each year must be determined at least 16 weeks prior to the annual general meeting.

32. Election and appointment of Elected Directors

- a) At the annual general meeting at which an Elected Director retires or at which a vacancy in the position of Elected Director exists, TWS may fill the vacated position by electing by direct ballot an individual to that office from the nominated Members and Delegates listed and considered in order as determined by lot on the ballot paper.

- b) A candidate must be nominated by 2 Members eligible to stand for election. For a Delegate, 1 of the nominating Members must be the Member for which the individual is the Delegate.
- c) The nomination form shall be in writing, contain the signed consent of the Member or Delegate to be a Director and be signed by the nominating Members. The signatures may be affixed to more than 1 form containing identical information.
- d) Nominations for the position of Elected Director shall be lodged with the Secretary not more than 10 weeks and not less than 5 weeks before the date of the next annual general meeting.
 - 1) The Board must advise Members at least 12 weeks before the date of the next annual general meeting:
 - i. date of the next annual general meeting and the consequent relevant dates in accordance with **rule 32** related to the election of Elected Directors;
 - ii. the Elected Directors who will be retiring at the next annual general meeting and the Regions from which they come;
 - iii. in accordance with **rule 29.c)&d)** any Region from which no Elected Director may be elected, if any, and Regions from which 1 or 2 Elected Director/s may be elected; and
 - iv. the nomination process for election as a Director.
 - 2) Where no relevant nomination has been received by 7 weeks before the date of the annual general meeting then notification must be made in accordance with **rule 32.h)**.
- e) A Member or Delegate may submit with their nomination form a resume of not more than 250 words. Such resume.
 - 1) may only include details in relation to:
 - i. the candidate's qualifications and relevant experience;
 - ii. the candidate's contribution to TWS to date; and
 - iii. key issues the candidate sees as facing TWS;
 - 2) must not endorse, disparage or otherwise refer to any other candidate or any other Director;
 - 3) must not contain anything that is defamatory; and
 - 4) must comply with any applicable By-laws set by the Board.
- f) The Secretary may in good faith edit any resume in such manner as they see fit to ensure compliance with **rule 32.e)**.
- g) The information provided in the resume will be included as the only information from the candidate in the notice of meeting.

- h) If, 7 weeks before the date of the annual general meeting, no nomination has been received from a Region where, after the annual general meeting there will be no Member or Member who is a Delegate who is an Elected Director with an address on the Register in that Region, the Secretary must advise the committee of each Wilderness Society Group organisation in that Region, if any, to encourage the nomination of a relevant candidate to stand for election as an Elected Director. Nomination requirements for any such candidate need to be in accordance with **rule 32.b)c)&e)** and must be received by the Secretary at least 5 weeks before the annual general meeting.
- i) In conjunction with the notice of meeting for the annual general meeting (see **rule 18.a)**) the Secretary must send to each Member entitled to vote, ballot material in a form or forms approved by the Board and requesting the Member to cast a ballot in accordance with the instructions in the ballot material. Any notice, material or other content sent may be sent in any form consistent with **rule 52**, including electronic form.
- j) For a Member to submit a valid ballot, the Member must complete the ballot paper in accordance with the instructions with the ballot material and submit the completed ballot material to reach the Secretary no later than 1 week prior to the annual general meeting. The instructions to submit the completed ballot material may require the material to be submitted in an electronic form, consistent with **rule 52**.
- k) The Board must appoint independent individuals who are not standing for election to the roles of returning officer and scrutineer. The returning officer must administer the processing of the ballot including the determination of the result in accordance with **rule 32.l)**.
- l) The result of the ballot will be determined by the eligible candidate who receives the highest number of ballots filling the first available position and the next eligible candidate, subject to **rule 29.c)&d)**, with the next highest number of ballots, provided that number is greater than 1, filling the next available position until available positions are filled.
 - 1) Any position that cannot be filled becomes a casual vacancy that the Board may fill in accordance with **rule 30**.
- m) The candidates will be advised of the result of the ballot at least 1 working day prior to the annual general meeting.
- n) The result of the ballot shall be declared at the annual general meeting.

33. *Vacation of office*

- a) Subject to **rules 33.b)&c)**, an individual vacates their office:
 - 1) of Elected Director at the conclusion of the annual general meeting at which they retire or their term of office expires subject to them being re-elected in accordance with this Constitution; and

- 2) of Appointed Director at the conclusion of their term of office (see **rule 28.c**)) subject to them being re-appointed a Director in accordance with this Constitution.
- b) Any Director may resign by giving written notice to TWS through the Secretary of their intention to resign and the resignation will take effect at the time expressed in the notice provided that the time is not earlier than the date of delivery of the written notice to the Secretary, or if no time is expressed, at the time the notice is received by the Secretary.
- c) The office of a Director becomes vacant if the Director:
 - 1) is subject to any of the circumstances prescribed by the Act or ACNC Act;
 - 2) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
 - 3) dies;
 - 4) becomes bankrupt;
 - 5) makes any arrangement or composition with their creditors generally unless the Board resolves otherwise;
 - 6) is convicted on indictment of an offence unless the Board within 2 months after that conviction resolves to confirm the Director's appointment or election (as the case may be) to the office of Director;
 - 7) is absent from 3 consecutive meetings of the Board, with or without the consent of the Board, unless at the next meeting of the Board, the Board resolves otherwise;
 - 8) has failed to disclose a pecuniary interest that would be required to be disclosed under the Act, as applicable to a public company that is not registered under the ACNC Act, or ACNC Act or material personal interest that would be required to be disclosed under the Act, as applicable to a public company that is not registered under the ACNC Act, or ACNC Act unless at the next meeting of the Board, the Board resolves otherwise;
 - 9) ceases to be a Financial Member or, subject to **rule 29.a**), ceases to be the Delegate of a Financial Member;
 - 10) is removed as a Director by TWS in general meeting; or
 - 11) to minimise the risk of potential conflicts of interest;
 - i. is or becomes a paid employee of TWS or any organisation in the Wilderness Society Group;
 - ii. is or becomes a member of the governing body of any organisation in the Wilderness Society Group;
 - iii. is or becomes an elected or appointed representative on any local council or in any parliament in Australia; or

- iv. subject to the law, is or becomes a member of a registered political party, either State, Territory or Federal.

34. *No alternate Directors*

- a) Directors are not entitled to appoint alternate Directors.

35. *Interested Directors*

- a) Subject to **rule 33.c)7)&10)i)&ii)**, a Director may hold any other office (other than auditor) in TWS or any related body corporate in conjunction with their directorship and may be appointed to that office upon such terms as to tenure of office and otherwise as the Directors think fit, except that the Director may not receive remuneration in that other capacity.
- b) Subject to **rule 33.c)7)&10)i)&ii)**, a Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by TWS or in which TWS may be interested as a shareholder, member or otherwise and is not accountable to TWS for any other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.
- c) The Board may exercise the voting rights conferred by shares in any body corporate held or owned by TWS in such manner in all respects as the Board thinks fit including voting in favour of any resolution appointing a Director as a director or other officer of that body corporate or voting for the payment of remuneration to the officers of that body corporate and a Director may, if permitted by law, vote in favour of the exercise of those voting rights notwithstanding that they are, or may be about to be appointed, a director or other officer of that other body corporate and, as such, interested in the exercise of those voting rights.
- d) The Board may make By-laws regarding the disclosure of interests that a Director, and any person deemed by the Board to be related to or associated with the Director, may have in any matter concerning TWS or a related body corporate. Any such By-laws shall bind all Directors.

36. *Payments to Directors*

- a) Having regard to **rule 9.c)** payments may be made to any Director for:
 - 1) out-of-pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously agreed by the Board; and
 - 2) any service rendered to TWS by the Director in a professional or technical capacity, other than in the capacity as a Director, where the provision of the service has the prior approval of the Board and is not more than an amount which commercially would be reasonable for the service.

37. Powers and duties of Directors

- a) The Directors are responsible for the control, ultimate management and conduct of TWS, including for the funds and other property of TWS, and are accountable to Members in general meeting. The Board may exercise to the exclusion of TWS in general meeting all the powers of a company that are not required by the Act, the ACNC Act or by this Constitution to be exercised by TWS in general meeting.
- b) Without limiting the generality of **rule 37.a)**, the Board may exercise all the powers of TWS to borrow or otherwise raise money, to charge any property or business of TWS and to issue debentures or give any other surety for a debt, liability or obligation of TWS or of any other person.
- c) The funds of TWS are to be derived from annual subscriptions of Members, fees for services, donations, donations that are subject to **rule 60**, and such other sources as the Board determines.
- d) The Board must ensure that:
 - 1) all moneys received by TWS are deposited as soon as practicable and without deduction to the credit of TWS's bank account or accounts or other authorised deposit-taking institution account; and
 - 2) where required and as soon as practicable after receiving any money, TWS issues an appropriate receipt or confirmation of payment received.
- e) Subject to **rule 60**, the Board may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of TWS.
- f) Subject to any restrictions imposed by this Constitution including **rules 15, 45.e) & 60**, the Board may from time to time confer upon any Director for the time being or any other person or office as they may select such of the powers exercisable under this Constitution by the Board as it may think fit from time to time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
- g) Powers conferred under **rule 37.f)** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any such powers with or without cause subject to any applicable contract between TWS and the relevant person and subject to any applicable industrial law.

38. Proceedings of Directors

- a) The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- b) The planned contemporaneous linking together of Directors by technologies, such as telephone or other electronic means including virtual meetings, that are consented to by all Directors and that allow

reasonable interaction between all participating Directors, constitutes a Board meeting provided the number of Directors participating is sufficient to constitute a quorum.

- c) All provisions of this Constitution relating to meetings of the Directors apply, so far as they can and with such changes as are necessary, to meetings of Directors by such technologies.
- d) A Director participating in a meeting by technology in accordance with **rule 38.b)** is taken to be present in person at the meeting.
- e) A meeting by means of technology is to be taken to be held at the place determined by the Director who is chairing the meeting provided that at least 1 of the Directors involved was at that place for the duration of the meeting. Failing such a determination, the meeting is deemed to be held at the registered office of TWS.
- f) A Member may submit a request in writing to the Board for approval to attend a specific meeting of the Board provided that:
 - 1) the request must indicate why the Member wishes to attend;
 - 2) any decision as to whether the Member may attend the meeting of the Board, in full or in part, is entirely a matter for the Board;
 - 3) the Board may impose any obligations or requirements in relation to the attendance; and
 - 4) any expense arising from any such attendance shall not be the responsibility of TWS.

39. *Convening of a meeting of Directors*

- a) The Convenor or any 3 or more Directors may, whenever they think fit, convene a meeting of the Directors.
- b) The Secretary must, when requested by the Convenor or on the written requisition of any 3 or more Directors, convene a meeting of Directors.

40. *Notice of a meeting of Directors*

- a) Subject to this Constitution, notice of a meeting of Directors must be given to each individual who is at the time of giving the notice a Director, other than a Director on leave of absence approved by the Board, or a Director outside of Australia who has notified the Secretary that they will not be contactable.
- b) Only Directors have a right to notice of a meeting of the Board and to attend a meeting of the Board. Any other person in attendance is in attendance at the invitation of the Board and must leave if directed to by the Director who is chairing the meeting.
- c) A notice of a meeting of Directors:
 - 1) must specify the time and place of the meeting;
 - 2) should where practicable state the nature of the business to be transacted at the meeting;

- 3) may be given immediately before the meeting;
 - 4) may be given in person or by post or by telephone, fax, email or other electronic means; and
 - 5) if technological connection of Directors is to be involved in accordance with **rule 38.b)**, identify how that connection is to be made.
- d) Unless special circumstances apply, at least 48 hours notice of a meeting of the Directors should be given.
 - e) A Director may waive notice of any meeting of Directors by notifying the Secretary to that effect in person or by post or by telephone, fax, email or other electronic means.
 - f) The non-receipt of notice of a meeting of Directors by, or failure to give notice of a meeting to, a Director does not invalidate any act, matter or thing done or resolution passed at the meeting:
 - 1) if the non-receipt or failure occurred by accident or error;
 - 2) if before or after the meeting, the Director;
 - i. has waived or waives notice of that meeting under **rule 40.e)**; or
 - ii. has notified or notifies TWS of their agreement to that act, matter, thing or resolution personally or by post or by telephone, fax, email or other electronic means; or
 - 3) the Director attended the meeting.
 - g) Attendance by a person at a meeting of Directors waives any objection that that person may have to a failure to give notice of the meeting.

41. *Quorum at a meeting of Directors*

- a) No business may be transacted at a meeting of Directors unless a quorum of Directors is present during the time the business is dealt with.
- b) A quorum at a meeting of Directors is half the number of the Directors entitled to attend the meeting, rounded up to the next whole number if it is not a whole number, plus 1.
- c) A Director who is present and is disqualified from voting on a matter pursuant to **rule 35** shall be counted in the quorum despite that disqualification, even if they do not participate in that part of the meeting from which they are disqualified from voting, provided that:
 - 1) if the number of Directors present and qualified to vote is less than 3 then those Directors must not vote on the matter and a decision on the matter must be delayed until at least 3 Directors are available and qualified to vote and if at least 3 such Directors are not available and qualified to vote then if a determination is required the matter must be referred to a general meeting of TWS for determination.

- d) If there is a vacancy in the office of a Director then, subject to **rule 41.e)** the remaining Director or Directors may act.
- e) If the number of Directors in office at any time is less than the minimum number required by **rule 27.a)**, the remaining Directors must act as soon as possible:
 - 1) to increase the number of Directors to a number sufficient to satisfy the minimum number of Directors required by **rule 27.a)**; or
 - 2) to convene a general meeting of TWS for that purpose; and
 - 3) until the actions required by **rule 41.e)1)or2)** have happened, the Directors must only act if and to the extent that there is an emergency requiring them to act.

42. Convenor

- a) The Directors:
 - 1) must elect 1 of the Directors to the office of Convenor at least annually and in any event at the first meeting of the Board following an annual general meeting; and
 - 2) may, subject to **rule 42.a)1)**, at the time of election or during the period in office determine the period for which that Director is to be Convenor.
- b) If an election to the office of Convenor is tied more than once then the successful candidate must be determined by lot unless at least 1 candidate withdraws.
- c) The Convenor has such powers and duties as specified in this Constitution, as required by law plus such powers and duties as determined by the Directors.
- d) The Convenor must if present within 15 minutes after the time appointed for the holding of the meeting, and if willing to act, preside as chair of each meeting of Directors.
- e) The Directors present must elect 1 of themselves to act as chair of the meeting if at a meeting of Directors:
 - 1) there is no Convenor;
 - 2) the Convenor is not present within 15 minutes after the time appointed for the holding of the meeting; or
 - 3) the Convenor is present but is not willing to act as chair of the meeting or of part of the meeting.
- f) Despite anything in **rule 42.e)**, if the Convenor later attends a meeting of Directors or is later willing to act then they must take the role of chair of the meeting.

43. Decisions of Directors

- a) A meeting of Directors at which a quorum is present is a meeting of the Board and is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Directors under this Constitution.
- b) Subject to **rules 4.a), 41.c)1) & 42.**, questions arising at a meeting of the Board are to be decided by Modified Consensus of votes cast by the Directors present and entitled to vote and any such decision is for all purposes a determination of the Directors.

44. Circulating resolutions

- a) The Board may pass a resolution without a Board meeting if the Directors entitled to vote on the resolution sign a document, subject to **rule 44.d)**, containing a statement of the resolution set out in the document. For this purpose signatures can be contained in more than 1 document and can include electronically transmitted signatures.
- b) A resolution under **rule 44.a)** shall be deemed to have been passed if at least a majority of Directors equivalent to a quorum in accordance with **rule 41.b)** has responded by signing, subject to **rule 44.d)**, a document containing a statement that they are in favour of the resolution set out in the document provided that no Director has responded that they are not in favour
 - 1) Where a resolution is not passed under **rule 44.b)**, the matter may be referred to a meeting of the Board for a decision.
- c) Resolutions passed in accordance with **rule 44.b)** are to be taken to have been passed on the date that is the latest of:
 - 1) the date 1 week after the resolution was distributed to Directors or such other date as may be specified in the document accompanying the proposed resolution; or
 - 2) on the date the resolution was assented to by the final Director whose support resulted in the number of Directors in favour of the resolution equalling the number that is a quorum in favour.
- d) For **rule 44.a)** a Director may signify assent to a resolution by signing the document or by notifying the Secretary of the Director's assent in person or by post or by telephone, fax, email or other electronic means.
- e) Where a Director signifies assent to a resolution other than in writing, the Director must by way of confirmation sign the document at the next meeting of Directors attended in person by that Director, but failure to do so does not invalidate the resolution to which the document relates.

45. Committees of the Board

- a) Subject to **rule 60**, the Board may form and delegate any of its powers to a committee of the Board consisting of such Director/s or other

individuals as the Board thinks fit and may from time to time revoke such delegation.

- b) A committee of the Board must, in exercise of the powers delegated to it, conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised will be taken to be exercised by the Board.
- c) Subject to **rule 45.b)**, the meetings and proceedings of any committee of the Board consisting of more than 1 individual will be governed, so far as they can and with such changes as are necessary, by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- d) A minute of all the proceedings and decisions of every committee of the Board shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made, entered and signed. A copy of such committee minutes shall be tabled for consideration at the next practical Board meeting or as otherwise required by the Board.
- e) If the Board establishes an audit-type committee of the Board it will consist of at least 3 individuals including at least 1 Director but the Convenor may not be a member of any such audit-type committee of the Board.
- f) The Board must provide to each committee of the Board terms of reference that cover as a minimum the purpose of the committee, the composition of the committee, any delegated authority to the committee, any reporting obligations other than minuting of meetings in accordance with **rule 45.d)** and the planned duration or the timing of a review of the committee.

46. *Validity of acts*

- a) All acts done at any meeting of the Board or by any individual acting as a Director or a committee of the Board attended by an individual acting as a Director shall be valid even if it is later discovered that there was a defect in the appointment of the individual as a Director or the individual was disqualified as a Director or had vacated office or the Director or individual was not entitled to vote, provided the circumstance was not known by the Director or individual or committee of the Board when the act was done.

VI. ADMINISTRATION

47. *Secretary*

- a) The Board must appoint at least 1 Secretary who may, but need not, be a Director or a Member or an employee and who must be at least 18 and reside in Australia.

- b) The Secretary holds office subject to the Act and on such terms and conditions as to remuneration and otherwise as the Board determines. The Secretary may act in an honorary capacity.
- c) In addition to a Secretary vacating their position in accordance with the Act, the Board may remove any Secretary so appointed, subject to the terms of any contract and the law.

48. Patron

- a) The Members in general meeting may appoint a Patron or more than 1 Patron. A Patron should be prominent in the field of environmental protection. A Patron may, but need not, be a Member.
- b) Any Patron holds office until retirement under **rule 48.c)** or until resignation, death or removal by resolution at a general meeting of TWS.
- c) The resolution appointing a Patron must specify the term of office which cannot exceed 3 years from the date of appointment.
- d) A Director or other Officer cannot be appointed Patron and a Patron is not an Officer or Director of TWS.
- e) A Patron has such rights, privileges and duties as may be agreed from time to time by the Board.

49. Minutes

- a) The Directors must ensure that minutes of proceedings and resolutions of general meetings of TWS and of meetings of the Directors (including committees of the Board) are recorded in books kept for that purpose within 1 month following the relevant meeting.
- b) The Directors must ensure that minutes of resolutions passed by Directors and committees of the Board without a meeting are recorded in books kept for the purpose within 1 month after the resolution is passed.
- c) The minutes of a meeting of the Board or a committee of the Board must be confirmed by a subsequent meeting and signed within a reasonable time after the meeting by the chair of the meeting or the chair of the following meeting.
- d) The minutes of a passing of a resolution without a meeting of Directors must be confirmed at a subsequent meeting of the Board and be signed by a Director within a reasonable time after the resolution is passed.
- e) A minute that is recorded and signed under **rule 49** is evidence of the proceeding or resolution to which it relates unless the contrary is proved.

50. Inspection of records

- a) The Directors must ensure that the minute books for general meetings of TWS are open for inspection by Members free of charge at any reasonable hour.
- b) Subject to **rule 50.a)** and to the Act and the ACNC Act, the Board may determine whether and to what extent, and at what times and places and

under what conditions, the minute books, financial records and other documents of TWS or any of them, will be open to inspection by Members or Representatives other than Directors.

- c) A Member or Representative other than a Director does not have the right to inspect any books, records or documents of TWS except as provided by law, this Constitution or authorised by the Board.
- d) Notwithstanding **rule 50.b)&c)**, previous Directors have a right to inspect minute books for meetings of the Directors and Committees of the Board for the period covering when they were a Director.
- e) Except as otherwise provided by this constitution, the Secretary must keep in their custody or under their control all records, books and other documents relating to TWS.

51. Accounts and audit

- a) TWS must prepare and deal with such accounts as are required to be prepared by it under the Act and/or the ACNC Act and/or other laws.
- b) If required by the Act or the ACNC Act or other laws, and subject to **rule 60.k)** the Directors must cause the financial records of TWS to be audited in accordance with the applicable requirements.
- c) If the appointment of an auditor is required an annual general meeting may appoint an appropriate auditor who meets any applicable requirements of the Act and ACNC Act. If the appointment is required prior to the next annual general meeting then the Board may appoint an auditor in accordance with the requirements of the Act and ACNC Act but any such appointment must be taken to the next general meeting for consideration and endorsement.
- d) The financial year shall be the period of 12 months ending on 30 June, unless the Board determines a different end date.

52. Notices

- a) A notice may be given by TWS to a Member:
 - 1) by serving it on the Member personally;
 - 2) by sending it by prepaid post to the Member's address as shown in the Register;
 - 3) by sending it to the fax number, Electronic Contact Address or such other address the Member has supplied to TWS for the giving of notices;
 - 4) where applicable, by making a copy of it accessible electronically on a website of, or related to, TWS and advising the Member of its availability via the Electronic Contact Address; or
 - 5) by publishing it in a regular newsletter publication of TWS to Members which publication:
 - i. may be printed; or

- ii. where applicable, be electronic or internet based provided the Member is advised of its availability via the Electronic Contact Address.
- b) The fact that a Member has supplied a fax number or email or other electronic address for the giving of notices:
 - 1) does not require TWS to give any notice to that person by fax or email or other electronic means; or
 - 2) does not prevent TWS from giving notice to that person in the manner envisaged by **rule 52.a)4)or 5).**
- c) A signature to any notice given by TWS to a Member under **rule 52.a)** may be in writing or a facsimile printed or affixed by some mechanical, electronic or other means.
- d) Subject to this Constitution, a notice may be given by TWS to any Director either by serving it personally at, or by sending it by prepaid post to, the Director's usual residential or business address, or by sending it to the fax number, Electronic Contact Address, or such other address as the Director has supplied to TWS for the giving of notices.
- e) Subject to this Constitution, a notice may be given by a Member or a Director to TWS by serving it on TWS at, or by sending it by prepaid post to, the registered office or principal place of business if any of TWS or by sending it to the principal fax number or principal electronic address of TWS at its registered office or principal place of business, if any.
- f) Where a Member does not have a registered address or Electronic Contact Address or where TWS has bona fide reason to believe that a Member is not known at the Member's registered address or Electronic Contact Address, all future notices are deemed to be given to the Member if the notice is exhibited in the registered office, if any, for a period of 48 hours (and is deemed to be duly served at the commencement of that period) unless and until the Member informs TWS of a registered address or Electronic Contact Address.
- g) A reference in this Constitution to a notice or other communication in writing includes a notice given by fax or electronic means or other modes of reproducing words.

53. *Time of service of notices*

- a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been given 3 days after it is posted.
- b) Where a notice is sent by fax or email or other electronic means, service of the notice is to be taken to be effected on the Business Day after the date it is sent.

- c) Where TWS gives a notice under **rule 52.a)4**), service of the notice is to be taken to be effected on the Business Day after the Member is advised of its availability.
- d) When TWS gives notice under **rule 52.a)5**), service of the notice is to be taken to be effected on the earlier of the Business Day after the day on which the newsletter was distributed to the Member or on the Business Day after the Member was advised of its availability for an internet-based publication.

54. *Other communications and documents*

- a) **Rules 52.&53** apply, so far as they can and with such changes as are necessary as determined by the Board, to the service of any communication or document.

55. *Execution of documents*

- a) Without limiting the manner in which TWS may execute any approved contract, including as permitted under the Act, TWS may execute any agreement, deed or other document by it being signed by:
 - 1) 2 Directors;
 - 2) 1 Director and 1 Secretary;
 - 3) 1 Director or 1 Secretary and 1 other Officer authorised by the Board;
or
 - 4) 2 other Officers authorised by the Board.
- b) Nothing in this Constitution requires TWS to execute any agreement, deed or other document under common seal for the same to be executed effectively by TWS.
- c) The Board may at any time determine that TWS shall have a common seal.
 - 1) If TWS has a common seal:
 - i. it must only be used by the authority of the Board and every document to which the common seal is affixed must be signed by a Director and be countersigned by another Director or by the Secretary; and
 - ii. the Board must provide for the safe custody of the common seal which will be with the Secretary unless the Board resolves otherwise from time to time.

56. *Indemnity and insurance*

- a) Subject to **rule 56.b**), TWS must indemnify each Officer (which for this purpose includes any member of a committee of the Board who is not an Officer) on a full indemnity basis and to the full extent permitted by law against all liabilities, including a loss, liability, cost, charge or expense, incurred by the Officer as an Officer, including without limitation:

- 1) a liability for negligence; and
 - 2) a liability for reasonable legal costs.
- b) The indemnity in **rule 56.a)** does not operate in relation to any liability, subject to **rule 56.c)**, which:
- 1) is a liability of TWS or any of its related bodies corporate;
 - 2) is a liability for a pecuniary penalty order under the Act or the ACNC Act or a compensation order under the Act or the ACNC Act; or
 - 3) arises out of conduct of the Officer which was not in good faith, or which involved wilful misconduct, gross negligence, reckless misbehaviour or fraud.
- c) The indemnity in **rule 56.a)** does not operate in relation to legal costs incurred by the Officer in defending any action for a liability if the costs are incurred:
- 1) in defending or resisting proceedings in which the Officer is found to have a liability referred to in **rule 56.b)**;
 - 2) in defending or resisting criminal proceedings in which the Officer is found guilty;
 - 3) in defending or resisting proceedings brought by ASIC, ACNC or a liquidator for a court order if the grounds for making the order are found by the court to have been established. This does not include costs incurred in responding to actions taken by ASIC, ACNC or a liquidator as part of an investigation before commencing proceedings for the court order; or
 - 4) in connection with proceedings for relief to the Officer under the Act or ACNC Act where the court denies the relief.
- d) If there is any appeal in relation to any proceedings referred to in **rule 56.c)**, it is the outcome of the final appeal that is relevant for the purposes of **rule 56.c)**.
- e) The indemnity in **rule 56.a)**:
- 1) does not extend to and is not an indemnity against any amount in respect of which the indemnity would otherwise be illegal, void, unenforceable or not permitted by law; and
 - 2) does not operate in respect of any liability of the Officer to the extent that that liability is covered by insurance.
- f) The indemnity in **rule 56.a)**:
- 1) is enforceable without the Officer having first to make any payment; and
 - 2) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an Officer of TWS or its related bodies corporate.

- g) For each Officer against any liability incurred by the Officer as an Officer including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal, and whatever their outcome TWS may, to the extent permitted by law:
 - 1) purchase and maintain insurance; or
 - 2) pay or agree to pay a premium for insurance.
- h) Nothing in **rules 56.a)&g)**:
 - 1) affects any other right or remedy that a person to whom those rules apply may have in respect of any liability referred to in those rules; or
 - 2) limits the capacity of TWS to indemnify or provide or pay for insurance for any person to whom those rules do not apply.
- i) TWS may enter into a deed with any Officer to give effect to the rights conferred by **rule 56.h)**, or the exercise of a discretion under **rule 56.h)** on such terms as the Board thinks fit which are not inconsistent with **rule 56.h)**.

57. Submission to jurisdiction

- a) Each Member submits to the non-exclusive jurisdiction of the Supreme Court of Tasmania and the courts which may hear appeals from that court.

58. Prohibition and enforceability

- a) Any provision of, or the application of any provision of, this Constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- b) Any provision of, or the application of any provision of, this Constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

59. Winding up

- a) If any property remains following the winding up or dissolution of TWS after satisfaction of all its debts and liabilities, this property will not be paid to or distributed amongst Members as members, but will be given or transferred to institutions or bodies corporate that have:
 - 1) objects which are similar to the Objects;
 - 2) constitutions which require their income and property to be applied to promoting their objects; and
 - 3) constitutions which prohibit them from paying or distributing their income and property amongst their members to an extent at least as great as imposed on TWS by **rule 9.b)**.

- b) The proportional allocations are to be determined by the Members at or before the time of dissolution and failing such determination being made, by the Directors at or before the time of dissolution and failing such determination by application to the court for determination.
- c) If TWS is endorsed or duly authorised in any way as a deductible gift recipient in accordance with the Tax Act and TWS maintains accounts or a gift fund pursuant to such endorsement or authorisation, TWS must on the earlier of the winding up of such accounts or gift fund or of TWS having its deductible gift recipient endorsement or authorisation revoked transfer any surplus assets of those accounts or gift fund to another institution or body corporate in Australia that has:
 - 1) objects which are similar to the Objects;
 - 2) a constitution which requires its income and property to be applied to promoting its objects;
 - 3) a constitution which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on TWS by **rule 9.b**); and
 - 4) which satisfies specific requirements of the Tax Act related to the management of a gift fund or of accounts used for the handling of deductible gift recipient funds.
- d) The identity of the institutions or bodies corporate under **rule 59.c**) is to be determined by the Members in general meeting and failing such determination being made, by the Directors.

60. Public Fund

- a) While TWS remains a Registered Environmental Organisation it must maintain a public fund called *The Wilderness Fund*.
- b) The object of *The Wilderness Fund* is to further the environmental objectives of TWS.
- c) Members of the general public are to be invited to make donations of money or property to *The Wilderness Fund* for the environmental purposes of TWS.
- d) All gifts received by *The Wilderness Fund* must be kept separate from other funds of TWS. Sponsorship moneys and testamentary gifts must be deposited into a TWS account not to *The Wilderness Fund*.
- e) Any interest on money in *The Wilderness Fund* and any income and money derived from property given to *The Wilderness Fund* is to be paid to the *Wilderness Fund*.
- f) TWS must open and maintain a bank account for the public fund to be called *The Wilderness Society Ltd (The Wilderness Fund)*.
- g) Receipts for gifts including the required information will be issued in the name of *The Wilderness Fund*. Proper accounting records and procedures are to be kept and used for the *The Wilderness Fund*.

- h) *The Wilderness Fund* is to be administered by a committee of the Board comprising a Director, another Officer and up to 3 individuals drawn from the Members or Representatives or non-Members and be called *The Wilderness Fund Committee*.
- 1) At least 3 of members of *The Wilderness Fund Committee* must be 'responsible persons' as defined by the Guidelines to the Register of Environmental Organisations.
 - 2) The quorum for meetings of *The Wilderness Fund Committee* shall be 3 members of *The Wilderness Fund Committee*.
 - 3) Members of *The Wilderness Fund Committee* shall retain office until resignation or being removed from office by the Board or in the case of a Director ceasing to be a Director or in the case of the Secretary ceasing to be a Secretary.
- i) *The Wilderness Fund Committee* administering the fund must distribute moneys from the fund only to achieve the Objects of TWS and members of *The Wilderness Fund Committee* must be the only signatories to the bank account.
- j) Any allocation of funds or property to other organisations or persons will be made in order to achieve the environmental objectives of TWS and will not be influenced by the expressed preference or interest of a particular donor to *The Wilderness Fund*.
- k) Statistical information requested by the Environment Secretary, within the meaning of subdivision 30-E of the Tax Act, on donations to *The Wilderness Fund* for the Annual Statistical Return will be provided to the Environment Department in accordance with requirements set by the Environment Department. As required, an audited financial statement for TWS and *The Wilderness Fund* will be supplied with the Annual Statistical Return. The statement will provide information on the expenditure of *The Wilderness Fund's* moneys and the management of *The Wilderness Fund's* assets.
- l) TWS must comply with any rules that the Treasurer and the Minister may make to ensure that gifts made to *The Wilderness Fund* are only used for its principal purpose.
- m) Should *The Wilderness Fund* be wound up, or endorsement of *The Wilderness Fund* as a deductible gift recipient be revoked, any surplus assets must be transferred to another public fund on the Register of Environmental Organisations which is also exempt from income tax under Division 50 of the Tax Act and which has objects that are similar to the objects of *The Wilderness Fund*. If there is not another such fund on the Register of Environmental Organisations *The Wilderness Fund Committee* is to transfer the assets of *The Wilderness Fund* to another deductible gift recipient fund, authority or institution under Division 30 of the Tax Act.

- n) The Environment Secretary, within the meaning of subdivision 30-E of the Tax Act, must be advised of any change to the name of TWS or *The Wilderness Fund*; any change to the rules of *The Wilderness Fund*; any change to the membership of *The Wilderness Fund Committee*; or if there has been any departure from the model rules for public funds.
- o) *The Wilderness Fund* will be operated on a non-profit basis. None of the money or property accumulated by *The Wilderness Fund* will be distributed to Members of TWS apart from proper remuneration or reimbursement for administrative purposes.

61. Changes to this Constitution

- a) This Constitution may only be amended in accordance with the Act.
- b) Any amendment takes effect from the date when the amendment is adopted or the date of implementation in the special resolution.

62. Transitional provisions

- a) This was a transitional requirement that, having ceased to have function, was deleted on 23 Nov 2022.
- b) **The Board** – despite **rules 27&29**, the initial Elected Directors of TWS from when this Constitution becomes effective are the members of the committee of management of The Wilderness Society Inc when this Constitution becomes effective plus the following Directors from The Wilderness Society of Australia Inc:
 - 1) Stuart Ross Baird;
 - 2) Louise Marie Clifton;
 - 3) Peter Allen Follett;
 - 4) Laura Elizabeth Knight;
 - 5) Melissa Jane McQuillan;
 - 6) Michael Edward Osborne; and
 - 7) Linda Anne Selvey.
- c) This was a transitional requirement that, having ceased to have function, was deleted on 23 Nov 2022.
- d) This was a transitional requirement that, having ceased to have function, was deleted on 23 Nov 2022.
- e) This was a transitional requirement that, having ceased to have function, was deleted on 23 Nov 2022.
- f) This was a transitional requirement that, having ceased to have function, was deleted on 23 Nov 2022.
- g) This was a transitional requirement that, having ceased to have function, was deleted on 23 Nov 2022.

- h) This was a transitional requirement that, having ceased to have function, was deleted on 23 Nov 2022
- i) For a Director in office immediately prior to the adoption of this Constitution and who remains in office as an Elected Director after the next annual general meeting at which they stand for election, counting of the 2,3 consecutive terms in accordance with **rule 28.a)** shall commence only after that next annual general meeting at which they stand for election.
- j) This was a transitional requirement that, having ceased to have function, was deleted on 23 Nov 2022
- k) This was a transitional requirement that, having ceased to have function, was deleted on 23 Nov 2022.
- l) These **rule 62** provisions are arrangements to administer the transition from The Wilderness Society Inc to TWS. The provisions will progressively cease to have consequence at which stage the provision may be deleted and replaced with the words 'This was a transitional requirement that, having ceased to have function, was deleted on (date).'

END OF CONSTITUTION