

**The Council of Heads
of Australian Botanic Gardens
Incorporated**

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Association Number: A05197

Associations Incorporation Act 1991

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Rules of the Council of Heads of Australian Botanic Gardens Incorporated

Part 1.1 Preliminary

1. Definitions and Interpretation

1.1. In these rules:

ABN means Australian Business Number.

Act means the *Associations Incorporation Act 1991*.

Association means the Council of Heads of Australian Botanic Gardens Incorporated.

Access Canberra means the Chief Minister, Treasury and Economic Development Directorate or any other relevant government body as determined by the Association.

ACNC means the Australian Charities and Not-for-profits Commission, the national regulator of charities, pursuant to the *Australian Charities and Not-for-profits Commission (ACNC) Act 2012*.

AIS means the Annual Information Statement required to be submitted annually by a registered charity to the ACNC.

Applicable Not-for-profit Laws means any law applicable from time to time to the Association relating to the regulation of charities or not-for-profit entities, including the *Australian Charities and Not for profits Commission Act 2012*, and the *Charities Act 2013*, *Treasury Laws Amendment (Refining and Improving our Tax System) Act 2023* and the *Income Tax Assessment Act 1997*.

ASIC means the Australian Securities and Investments Commission.

Australian Accounting Standards means the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the *Australian Securities and Investments Commission Act 2001*) or other accounting standards which are generally accepted and consistently applied in Australia.

botanic garden means an institution holding documented collections of living plants for the purposes of scientific research, conservation, display and education.

Chairperson means the person holding office under these rules as Chairperson, or, if no such person holds that office, the Public Officer.

Committee means a meeting of the Committee in accordance with clause 30.

Director means Director of a registered Australian body with ASIC.

Ecosystem means a dynamic combination of plant, animal and micro-organism communities and their non-living environment (e.g. soil, water and climate regime) interacting as a functional unit.

financial year means the year ending on 30 June.

Gift Fund has the meaning prescribed to it under clause 4.1.

meeting of the Association means an annual general meeting or a general meeting (see clause 32), but does not include a Committee Meeting (see clause 30).

member means a member, however described, of the Association.

objects and purposes means the objects and purposes stated in clause 3.1.

person presiding is defined in clause 31.

plant means a member of the plant kingdom or of the fungus kingdom, and includes a part of a plant and plant reproductive material.

Public Officer has the meaning prescribed to it under clause 28.

Regulation means the *Associations Incorporation Regulation 1991*.

Representative means a representative appointed by a member organisation in accordance with clause 8.4.

Responsible Person means someone who is responsible for governing a charity and a member of the Committee. **Responsible People** are its board or Committee Members,

Secretary means the person holding office under these rules as Secretary of the Association or, if no such person holds that office, the public officer of the Association.

Special Resolution means a resolution passed in accordance with section 70 of the Act; that is, a resolution passed:

- (a) at a meeting of the Association, being a meeting of which at least 21 days' notice, accompanied by notice of intention to propose the resolution as a special resolution, has been given to the members of the Association; and
- (b) by at least three-quarters of the votes of those members of the Association who, being entitled to vote, vote in person or by proxy.

Strategic Plan means the Australian Seed Bank Partnership Strategic Plan 2023 – 2030 which sets out the vision and the desired outcome areas for said partnership.

- 1.2. The *Legislation Act 2001* applies to these rules in the same way as it would if they were an instrument made under the Act.
- 1.3. For the avoidance of doubt, a reference to a person includes a reference to a body politic or corporation, as well as an individual.
- 1.4. Presence in person at a meeting includes attendance via electronic communication tools such as teleconference and videoconference facilities.
- 1.5. A reference to a clause is to a clause of these rules.

Part 1.2 Name and Objects

2. Name and Structure

- 2.1. The name of the Association is *Council of Heads of Australian Botanic Gardens Incorporated*.
- 2.2. The Association is a not-for-profit registered charity with the ACNC, and endorsed as a deductible gift recipient under Subdivision 30—BA, of the *Income Tax Assessment Act 1997*.
- 2.3. The business name of the Association is Australian Seed Bank Partnership ABN 58 153 442 365, registered with ASIC.

3. Objects and Purposes

- 3.1. The Association is established for the purpose of supporting:
 - (a) the protection, conservation and enhancement of Australian plants and their ecosystems;
 - (b) the provision of information and education and undertaking research about plants and plant communities, through fundraising and working with Australian botanic gardens and other institutions to achieve the following objects:
 - (c) supporting and carrying out research into the diversity, conservation and ecosystem values of Australian plants and their communities;
 - (d) supporting the *ex situ* and *in situ* conservation of threatened Australian plants, including through the development and use of seed banks;
 - (e) promoting knowledge sharing about plants and plant communities;
 - (f) promoting education about plants and plant communities; and
 - (g) providing a forum for national advocacy to enhance and promote the botanical, horticultural, educational and environmental work of Australian botanic gardens.
- 3.2. The Association will prepare a Strategic Plan to guide how it will deliver on the purpose and objects through its primary conservation program.

Part 1.3 Gift Fund

4. The Gift Fund

- 4.1. The Association will establish and maintain a Gift fund for the principal purpose of supporting the objects and purposes of the Council of Heads of Australian Botanic Gardens Incorporated under clause 3.1 of these Rules.
- 4.2. Members of the public will be invited to make and the Gift Fund will receive all gifts of money or property for the above objects and purposes, and all moneys received because of those gifts will be credited to a separate bank account. The Gift Fund will not receive any other money or property.
- 4.3. The Gift Fund must comply with subdivision 30.130 of the *Income Tax Assessment Act 1997*.
- 4.4. The Association will issue receipts in the name of the Association and keep proper accounting records and use proper accounting procedures in relation to the Gift Fund.
- 4.5. The Association will be operated on a not-for-profit basis and be administered at the direction of the Committee (see Part 1.5).

5. Not-for-Profit

- 5.1. The income and property of the Association will be used and applied solely in promotion of its objects and purposes, and no portion will be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to members, directors, or trustees of the Association, except as genuine compensation for services rendered or expenses incurred on behalf of the organisation as provided under clause 34.7.

6. Conduit Policy

- 6.1. Allocations of the Gift Fund's moneys or property to other persons or organisations will be made in accordance with the established objects and purposes of the Association, and not be influenced by the preference of the donor.

7. Winding-up or Revocation of DGR

- 7.1. If the Association is wound up or if the endorsement of the Association as a deductible gift recipient for the operation of the Association is revoked, any and all surplus assets of the Gift Fund remaining after the payment of liability attributable to it will be transferred to another environment-focused registered charity endorsed as a deductible gift recipient with similar charitable purposes to which income tax-deductible gifts can be made, pursuant to section 92 of the Act.

Part 1.4 Membership

8. Membership qualifications

- 8.1. Unless otherwise determined in accordance with clause 12, 14, 15 or 18, membership of the Association comprises:
 - (a) Director of National Parks, representing the Australian National Botanic Gardens, Canberra (ANBG);

- (b) The Botanic Gardens and Parks Authority, established under the *Botanic Gardens and Parks Authority Act 1998* (**BGPA**);
 - (c) Botanic Gardens and State Herbarium of South Australia, established under the *Botanic Gardens and State Herbarium Act 1978* (**BGSH**);
 - (d) Brisbane City Council, representing Brisbane Botanic Gardens Mount Coot-tha (**BBG**);
 - (e) Northern Territory of Australia, representing the George Brown Darwin Botanic Gardens (**GBDBG**);
 - (f) Botanic Gardens of Sydney (BGOS), the registered business name of the Royal Botanic Gardens and Domain Trust (NSW), established under the *Royal Botanic Gardens and Domain Trust Act 1980*;
 - (g) The Royal Botanic Gardens Board Victoria, established under the *Royal Botanic Gardens Act 1991*, representing the Royal Botanic Gardens Victoria (**RBGV**);
 - (h) Royal Tasmanian Botanical Gardens established under the *Royal Tasmanian Botanical Gardens Act 2002* (**RTBG**).
- 8.2. An organisation listed in clause 8.1 will be a member for so long as it carries out programs or maintains collections that meet the objects and purposes, regardless of any change in name, management, structure, or portfolio name or responsibility, unless clause 12, 13 or 16 applies.
- 8.3. The Association may, by Special Resolution, determine classes of membership with different rights, including with respect to voting.
- 8.4. For a member organisation, it shall by a resolution of its directors or other governing body authorising such person as it thinks fit to act as its Representative or any meetings to be held during the continuance of the authority and the person so authorised shall be entitled to exercise the same powers on behalf of the member which they represent as that member could exercise if it were a natural person who was a member. The name of the Representative shown in the form of Appendix 1 submitted by a member organisation should be sufficient evidence of the appointment of a Representative under this clause (as the case may be).

9. Register of members

- 9.1. The Secretary will maintain a register of members and their Representatives, including the names and addresses of all members.
- 9.2. The name of a person that ceases to be a member in accordance with clause 12 will be deleted from the register of members.
- 9.3. The presence or absence of a person's name in the register of members will be prima facie proof of that person's membership status.

10. Nomination for membership

- 10.1. A nomination of a person for membership of the Association:
- (a) must be made by a member of the Association in writing, and seconded by another member in writing, substantially in the form set out in Appendix 1; and,
 - (b) must be lodged with the Secretary.
- 10.2. As soon as is practicable after receiving a nomination for membership, the Secretary must refer the nomination to the Committee, which must decide whether to approve or to reject the nomination.

- 10.3. If the Committee decides by three-quarter majority to approve a nomination for membership, the Secretary must as soon as practicable after that decision notify the nominee of that approval and request the nominee to pay within 28 days after receipt of the notification the sum payable under these rules by a member as the entrance fee and the first year's annual subscription.
- 10.4. The Secretary must, on payment by the nominee of the amounts mentioned in clause 14 within the required period, enter the nominee's name in the register of members and, on the name being so entered, the nominee becomes a member of the Association.

11. Membership entitlements not transferable

- 11.1. A right, privilege or obligation that a person has because of being a member:
- (a) cannot be transferred or transmitted to another person; and,
 - (b) terminates on cessation of the person's membership (except outstanding financial obligations under clause 14).

12. Cessation of membership

- 12.1. A person ceases to be a member if the person:
- (a) dies or, for a corporation, is wound up or ceases to exist for any other reason;
 - (b) resigns from membership of the Association in accordance with clause 13;
 - (c) is expelled from the Association in accordance with clause 16;
 - (d) fails to renew membership of the Association;
 - (e) no longer carries out programs or maintains collections that meet the objects and purposes of the Association; or,
 - (f) fails to meet its financial obligations under clause 14 within six months of the imposition of those obligations, unless otherwise determined by the Committee.

13. Resignation of membership

- 13.1. A member is not entitled to resign from membership of the Association except in accordance with this clause 13.
- 13.2. A member who has paid all amounts payable by the member to the Association may resign from membership of the Association by first giving notice (of not less than one month or, if the Committee has determined a shorter period, that shorter period) in writing to the Secretary of the member's intention to resign and, at the end of the period of notice, the member ceases to be a member.
- 13.3. If a person ceases to be a member, the Secretary must make an appropriate entry in the register of members recording the date the member ceased to be a member.

14. Fee, subscriptions etc

- 14.1. The entrance fee to the Association is the amount determined by the Committee from time to time.
- 14.2. The annual membership fee of the Association is the amount determined by the Committee from time to time.
- 14.3. The annual membership fee is payable:
- (a) except as provided by paragraph (b), before 1 July in each calendar year; or,

- (b) if a person becomes a member on or after 1 July in any calendar year, before 1 July in each succeeding calendar year.

15. Members' liabilities

- 15.1. The liability of a member to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of the winding up of the Association is limited to the amount (if any) unpaid by the member in relation to membership of the Association as required by clause 14.
- 15.2. The Association is required to indemnify any member for any liability incurred by the member with the authority of the Committee on behalf of the Association.

16. Disciplining of members

- 16.1. If the Committee is of the opinion that a member or its Representative:
 - (a) has persistently refused or neglected to comply with a provision of these rules; or,
 - (b) has persistently and wilfully acted in a manner prejudicial to the interests of the Association;the Committee may, by resolution:
 - (c) propose to expel the member or Representative from the Association; or,
 - (d) propose to suspend the member or Representative from the rights and privileges of membership of the Association that the Committee may decide for a specified period.
- 16.2. If the Committee passes a resolution under clause 16.1, the Secretary must, as soon as practicable, serve a written notice on the member:
 - (a) setting out the resolution of the Committee and the grounds on which it is based;
 - (b) stating that the member may address the Committee at a meeting to be held not earlier than 14 days and not later than 28 days after service of the notice;
 - (c) stating the date, place and time of that meeting; and
 - (d) informing the member that the member may do either or both of the following:
 - (i) attend and speak at that meeting;
 - (ii) submit to the Committee at or before the date of that meeting written representations relating to the resolution.
- 16.3. The Committee must hold the meeting specified in the notice given pursuant to clause 16.3, and, subject to section 50 of the Act, at that meeting, the Committee must:
 - (a) give to the member mentioned in clause 16.1 an opportunity to make oral representations;
 - (b) give due consideration to any written representations submitted to the Committee by that member at or before the meeting; and
 - (c) by resolution decide whether to confirm or to revoke the resolution of the Committee made under clause 16.1.
- 16.4. A resolution of the Committee under clause 16.1 is of no effect unless the Committee holds the meeting specified in the notice given pursuant to clause 16.2, in accordance with clause 16.3, and confirms the resolution.

- 16.5. If the Committee confirms a resolution under clause 16.3, the Secretary must, within seven days after that confirmation, by written notice inform the member of that confirmation and of the member's right of appeal under clause 17.
- 16.6. A resolution confirmed by the Committee under clause 16.3 does not take effect:
- (a) until the end of the period within which the member is entitled to appeal against the resolution if the member does not exercise the right of appeal within that period; or
 - (b) if within that period the member exercises the right of appeal, unless and until the Association confirms the resolution in accordance with clause 17.4.

17. Right of appeal of disciplined member

- 17.1. A member may appeal to the Association in general meeting against a resolution of the Committee that is confirmed under clause 16.3, within seven days after notice of the resolution is served on the member, by lodging with the Secretary a notice to that effect.
- 17.2. On receipt of a notice under clause 17.1, the Secretary must notify the Committee which must call a general meeting of the Association to be held within 21 days after the date when the Secretary received the notice or as soon as possible after that date.
- 17.3. Subject to section 50 of the Act, at a general meeting of the Association called under clause 17.2:
- (a) no business other than the question of the appeal may be transacted;
 - (b) the Committee and the member must be given the opportunity to make representations in relation to the appeal orally or in writing, or both; and,
 - (c) the members present must vote by secret ballot on the question of whether the resolution made under clause 16.3 should be confirmed or revoked.
- 17.4. If the meeting passes a Special Resolution in favour of the confirmation of the resolution made under clause 16.3, that resolution is confirmed.

18. Dispute Resolution

- 18.1. The grievance procedure set out in this clause applies to disputes under these Rules between:
- (a) a member and another member;
 - (b) a member and the committee;
 - (c) a member and the association.
- 18.2. A member must not initiate a grievance procedure in relation to a matter that is the subject of a procedure under rules 16 and 17 until the disciplinary procedure has been completed.
- 18.3. The parties to a dispute must attempt to resolve the dispute between themselves within 14 days of the dispute coming to the attention of each party.
- 18.4. A party to the dispute may ask the committee to help the parties resolve the dispute by agreement if, the committee is not party to the dispute and, the parties are unable to resolve the dispute between themselves.
- 18.5. If the parties are unable to resolve the dispute in accordance with Clauses 18.3 and 18.4, the parties must within 10 days:
- (a) notify the committee of the dispute; and

- (b) agree to or request the appointment of a mediator; and
- (c) attempt in good faith to settle the dispute by mediation.

18.6. The mediator must be:

- (a) a person chosen by agreement between the parties; or
- (b) in the absence of agreement, a person appointed by the committee (if the dispute is between a member and another member), or a person appointed or employed by the ACT Conflict Resolution Service (if the dispute is between a member and the committee or the association).

18.7. A mediator appointed by the committee may be a member or former member of the association but in any case must not be a person who:

- (a) has a personal interest in the dispute; or
- (b) is biased in favour of or against any party.

18.8. The mediator to the dispute, in conducting the mediation, must:

- (a) give each party every opportunity to be heard;
- (b) allow due consideration by all parties of any written statement submitted by any party;
- (c) ensure that natural justice is accorded to the parties throughout the mediation process; and
- (d) not determine the dispute.

18.9. If the mediation process does not resolve the dispute, the parties may seek to resolve the dispute in accordance with the law.

Part 1.5 Committee

19. Powers of Committee

- 19.1. The Committee, subject to the Act, the Regulation, these rules, and to any resolution passed by the Association in a meeting of the Association:
- (a) controls and manages the affairs of the Association;
 - (b) may exercise all functions that may be exercised by the Association other than those functions that are required by these rules to be exercised by the Association in general meeting; and
 - (c) has power to perform all acts and do all things that appear to the Committee to be necessary or desirable for the proper management of the affairs of the Association.
 - (d) assumes the role of Responsible People for the purpose of governing the charity and the Applicable Not-for-profit Laws; and
 - (e) assumes the role of office holders/ Directors for the purpose of the registered business, under the *Corporations Act 2001*.

20. Constitution and membership

- 20.1. Subject to clauses 25 and 26, the "Committee Members" are:
- (a) Representatives elected in accordance with clause 21, or appointed in accordance with clause 20.5 to be the following office-bearers:
 - (i) Chairperson;
 - (ii) Secretary; and,
 - (iii) Treasurer,
 - (b) the remaining Representatives, who will be ordinary Committee Members.
- 20.2. Each office-bearer holds office:
- (a) in a personal capacity, and, if he or she ceases to be the Representative of the relevant member organisation, the office becomes vacant and clause 20.5 applies;
 - (b) subject to these rules, until the conclusion of the next annual general meeting at which elections are held (see clause 21.1), but is eligible for re-election, subject to clause 20.5.
- 20.3. Each Representative holds the office of ordinary Committee member, subject to these rules, unless elected or appointed to an office-bearer position. If a person holding the office of ordinary Committee member ceases to be the Representative of the relevant member, the office of ordinary Committee member automatically passes to the new Representative of the relevant member.
- 20.4. Maximum Terms
- (a) All offices will be open for election at every annual general meeting at which elections are held (see clause 21.1).
 - (b) The Representative who held the office of Chairperson is not eligible for immediate re-election to that office (maximum term of Chairperson is three annual general meetings).

- (c) The persons who held the offices of Treasurer and Secretary may each be immediately re-elected to the same office to a maximum total term not exceeding three consecutive annual general meetings.
 - (d) There is no maximum term for ordinary Committee Members.
 - (e) Nothing in this clause 20.4 prevents a Committee member who has served the maximum term in one office from immediately serving in another office.
- 20.5. If there is a vacancy in the membership of the Committee, the Committee may appoint a Representative to fill the vacancy and the Representative so appointed holds office, subject to these rules, until the conclusion of the next annual general meeting at which elections are held (see clause 21.1).

21. Election of office-bearers

- 21.1. Elections of office-bearers will be held every third annual general meeting.
- 21.2. Nominations of candidates for election as office-bearers of the Association:
- (a) must be made in writing, signed by two Representatives and accompanied by the written consent of the candidate (which may be endorsed on the nomination form); and,
 - (b) must be given to the Secretary not less than seven days before the date fixed for the annual general meeting at which the election is to take place.
- 21.3. If only one nomination for an office-bearer position is received in accordance with clause 21.2, that candidate is taken to be elected.
- 21.4. If no nominations for an office-bearer position are received in accordance with clause 21.2, nominations may be received at the annual general meeting.
- 21.5. If no further nominations are received at the annual general meeting, vacant office-bearer positions remaining on the Committee are taken to be vacancies.
- 21.6. If more than one of nomination is received for an office-bearer position, a ballot must be held at the annual general meeting, as follows:
- (a) elections for Chairperson, Secretary and Treasurer (as required) will be held separately and in that sequence;
 - (b) each Representative present, whether in person or by proxy, has one vote;
 - (c) votes are to remain secret;
 - (d) the nominee who receives the highest number of votes is elected;
 - (e) if two or more nominees each receive the highest number of votes, the person presiding has a second or casting vote to decide which nominee is elected,
- or otherwise as the Committee may direct in writing at least two days before the date fixed for the annual general meeting.
- 21.7. A Representative is not eligible to simultaneously hold more than one office.

22. Chairperson

- 22.1. The Chairperson holds office on the terms and conditions, and with the powers, duties and authorities, as determined by the Association. The exercise of those powers and authorities and the performance of those duties by a Chairperson are subject at all times to the control of the Association.

22.2. The Association may suspend or remove the Representative in the office of Chairperson.

22.3. The position of Chairperson may be held only by a Representative.

23. Secretary

23.1. The office of Secretary may be held by:

- (a) a Representative; or,
- (b) a person nominated by a Representative as a person able to work in close consultation with the member that the Representative represents,

but in either case the person must be nominated and elected in accordance with clause 24.

23.2. If the office of Secretary is held by a non-Representative person nominated by a Representative under clause 24.1(b), then:

- (a) the Representative may hold another office;
- (b) the Representative retains voting rights;
- (c) the non-Representative person does not have voting rights.

23.3. The Secretary must, as soon as practicable after being appointed or elected as Secretary, notify the Association of his or her address.

23.4. The Secretary must keep minutes of:

- (a) all elections and appointments of office-bearers and ordinary Committee Members;
- (b) the names of members of the Committee present at a Committee Meeting or a meeting of the Association; and,
- (c) all proceedings at Committee Meetings and meetings of the Association.

23.5. Minutes of proceedings at a meeting must be approved by the person presiding at the meeting, or by the person presiding at the next succeeding meeting.

24. Treasurer

24.1. The office of Treasurer may be held by:

- (a) a Representative; or,
- (b) a person nominated by a Representative as a person able to work in close consultation with the member that the Representative represents,

but in either case the person must be nominated and elected in accordance with clause 21.

24.2. If the office of Treasurer is held by a non-Representative person nominated by a Representative under clause 24.1(b), then:

- (a) the Representative may hold another office;
- (b) the Representative retains voting rights; and
- (c) the non-Representative person does not have voting rights.

24.3. The Treasurer of the Association must:

- (a) collect and receive all amounts owing to the Association and make all payments authorised by the Association;

- (b) keep correct accounts and books showing the financial affairs of the Association with full details of all receipts and expenditure connected with the activities of the Association; and,
- (c) ensure that the accounts and books showing the financial affairs of the Association are audited and presented to the annual general meeting within the time and in the manner prescribed by Part 5 of the Act.
- (d) notify the Committee if a member fails to pay moneys due in accordance with these rules.

25. Vacancies

25.1. A vacancy in the office of an office-bearer of the Committee happens if the person holding the office:

- (a) dies;
- (b) ceases to be a Representative;
- (c) if, in relation to a person described in clause 23.1(b) or 24.1(b), the relevant Representative notifies the Secretary in writing that the person does not work (or as of a specified date will not be working) in close consultation with the member, or no longer has the confidence of the member;
- (d) resigns the office;
- (e) is removed from office under clause 26;
- (f) becomes bankrupt or personally insolvent;
- (g) suffers from mental or physical incapacity;
- (h) is disqualified from office under section 63 or 63A of the Act; or,
- (i) is absent without the consent of the Committee from all meetings of the Committee held during a period of six months.

26. Removal of Committee Members

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

27. Delegation by Committee to subcommittee

27.1. The Committee may, in writing, delegate to one or more subcommittees the exercise of the functions of the Committee that are specified in the instrument of delegation, other than:

- (a) this power of delegation; and,
- (b) a function that is a function imposed on the Committee by the Act, by any other Territory law, or by resolution of the Association in general meeting.

27.2. Subcommittees consist of such members and non-members that the Committee specifies in the instrument of delegation.

27.3. A subcommittee may meet and adjourn as it considers appropriate.

27.4. A function, the exercise of which has been delegated to a subcommittee under this clause 27 may, while the delegation remains unrevoked, be exercised from time to time by the subcommittee in accordance with the terms of the delegation.

27.5. A delegation under this clause 27 may be made subject to any conditions or limitations about the exercise of any function, or about time or circumstances, that may be specified in the instrument of delegation.

- 27.6. Despite any delegation under this clause 27, the Committee may continue to exercise any function delegated.
- 27.7. The Committee may, in writing, revoke wholly or in part any delegation under this clause 27.

28. Public Officer

- 28.1. The Committee must have a public officer in accordance with the Act ("**Public Officer**").
- 28.2. The Public Officer will:
- (a) if not already a member of the Committee, be entitled to attend meetings of the Committee, but if not a member of the Committee, will have no right to vote;
 - (b) be at least 18 years of age and permanently resident in the Australian Capital Territory;
 - (c) be responsible to the Committee for meeting the requirements of the Public Officer under the Act.
- 28.3. An act of the Public Officer of the Association will not be taken to be invalid only because:
- (a) there is a defect in the Public Officer's appointment;
 - (b) the Public Officer was not eligible to be Public Officer by virtue of clause 28.2(b);
 - (c) the office of the Public Officer was, at the time of the act, taken to be vacant pursuant to clause 28.4.
- 28.4. The office of Public Officer becomes vacant if the person holding that office:
- (a) dies;
 - (b) resigns his or her office in writing addressed to the Committee;
 - (c) is removed from office by resolution of the Committee by simple majority plus one;
 - (d) becomes insolvent or under administration;
 - (e) suffers from mental or physical incapacity;
 - (f) is convicted of an offence referred to in section 63 of the Act after taking office, or it comes to the Committee's attention that he or she was convicted, or released from imprisonment in respect of, such an offence within the five years immediately preceding his or her appointment as Public Officer; or,
 - (g) ceases to be a resident of the Australian Capital Territory.
- 28.5. If the office of Public Officer becomes vacant, the Committee will appoint a replacement within 14 days.

29. Validity and Effectiveness of Acts

- 29.1. Any act or thing done or suffered, or purporting to have been done or suffered, by:
- (a) the Committee;
 - (b) a subcommittee acting in the exercise of a delegation under clause 27; or,
 - (c) a member or non-member acting on behalf of the Committee or a subcommittee,

has the same force and effect as it would have if it had been done or suffered by the Committee, and is valid and effectual notwithstanding any defect that may afterwards be discovered in the appointment or qualification of any member or non-member.

Part 1.6 Meetings

30. Committee Meetings

30.1. Holding and quorum

- (a) The Committee must meet at least three times in each calendar year at the place and time that the Committee may decide.
- (b) Additional meetings of the Committee may be called by any member of the Committee.
- (c) Oral or written notice of a meeting of the Committee must be given by the Secretary to each member of the Committee at least 14 days (or any other period that may be unanimously agreed on by the members of the Committee) before the time appointed for the holding of the meeting.
- (d) Notice of a meeting given under clause 32.2 must specify the general nature of the business to be transacted at the meeting, and no business other than that business may be transacted at the meeting, except business that the Committee Members present at the meeting unanimously agree to treat as urgent business.
- (e) Any five members of the Committee constitute a quorum for the transaction of the business of a meeting of the Committee.
- (f) No business may be transacted by the Committee unless a quorum is present and, if within half an hour after the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same place and at the same hour of the same day in the following week.
- (g) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting is dissolved.

30.2. Voting and decisions

- (a) Questions arising at a meeting of the Committee or of any subcommittee appointed by the Committee are decided by a majority of the votes of members of the Committee or subcommittee present at the meeting.
- (b) Each member present at a meeting of the Committee or of any subcommittee appointed by the Committee (including the person presiding at the meeting) is entitled to one vote but, if the votes on any question are equal, the person presiding may exercise a second or casting vote.

31. Person presiding

- 31.1. The Chairperson presides at each meeting of the Association and the Committee.
- 31.2. If the Chairperson is absent from a meeting, the Committee Members present must elect one of the Representatives present to preside at the meeting.
- 31.3. The person presiding will ensure that all Representatives and observers invited in accordance with clause 32.7 are given opportunity to present views and discuss matters raised.

32. Meetings of the Association

32.1. Annual general meetings

- (a) With the exception of the first annual general meeting of the Association, the Association must, at least once in each calendar year and within five months after the end of each financial year, call an annual general meeting of its members.

- (b) The Association must hold its first annual general meeting:
 - (i) within 18 months after its incorporation under the Act; and,
 - (ii) within 5 months after the end of the first financial year.
- (c) Clauses 32.1(a) and (b) have effect subject to the powers of the registrar-general under section 120 of the Act in relation to extensions of time.
- (d) The annual general meeting of the Association must, subject to the Act, be called on the date and at the place and time that the Committee considers appropriate.
- (e) In addition to any other business that may be transacted at an annual general meeting, the business of an annual general meeting is:
 - (i) to confirm the minutes of the last annual general meeting and of any general meeting held since that meeting;
 - (ii) to receive reports from the Committee on the activities of the Association during the preceding financial year;
 - (iii) to elect office-bearers of the Committee;
 - (iv) to receive and consider the statement of accounts and the reports that are required to be submitted to members under section 73(1) of the Act; and,
 - (v) appoint the auditor for the current financial year in accordance with clause 36.1.
- (f) An annual general meeting must be specified as such in the notice calling it in accordance with clause 32.5.
- (g) An annual general meeting must be conducted in accordance with the provisions of this Part 1.6.

32.2. General meetings

- (a) The Committee may, whenever it considers appropriate, call a general meeting of the Association.
- (b) The Committee will endeavour to rotate the location of general meetings among the member botanic gardens, and overseas as appropriate.
- (c) The Committee must, on the requisition in writing of not less than five Representatives, call a general meeting of the Association.
- (d) A requisition of Representatives for a general meeting:
 - (i) must state the purpose or purposes of the meeting;
 - (ii) must be signed by the Representatives making the requisition;
 - (iii) must be lodged with the Secretary; and,
 - (iv) may consist of several documents in a similar form, each signed by one or more of the Representatives making the requisition.
- (e) If the Committee fails to call a general meeting within one month after the date when a requisition of Representatives for the meeting is lodged with the Secretary, any one or more of the Representatives who made the requisition may call a general meeting to be held not later than three months after that date.
- (f) A general meeting called by a Representative or Representatives mentioned in clause 32.2(c) must be called as nearly as is practicable in the same way as general meetings are called by the

Committee and any member who thereby incurs expense is entitled to be reimbursed by the Association for any reasonable expense so incurred.

32.3. Procedure and quorum

- (a) No item of business may be transacted at a meeting of the Association unless a quorum of Committee Members entitled under these rules to vote is present during the time the meeting is considering that item.
- (b) Five Committee Members present in person (who are entitled under these rules to vote at a general meeting) constitute a quorum for the transaction of the business of a meeting of the Association.
- (c) If within 30 minutes after the appointed time for the start of a meeting of the Association a quorum is not present, the meeting:
 - (i) if a general meeting called on the requisition of members, is dissolved; and,
 - (ii) in any other case, stands adjourned to the same day in the following week at the same time, and (unless another place is specified at the time of adjournment by the person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.
- (d) If at the adjourned meeting held in accordance with clause 32.3(c)(ii) a quorum is not present within 30 minutes after the time appointed for the start of the meeting, the members present (being not less than three) constitute a quorum.

32.4. Adjournment

- (a) The person presiding at a meeting of the Association at which a quorum is present may, with the consent of the majority of Committee Members present at the meeting, adjourn the meeting from time to time and place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (b) If a meeting of the Association is adjourned for 14 days or more, the Secretary must give written or oral notice of the adjourned meeting to each Representative stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (c) Except as provided in clauses 32.4(a) and (b), notice of an adjournment of a meeting of the Association or of the business to be transacted at an adjourned meeting is not required to be given.

32.5. Notice

- (a) Except if the nature of the business proposed to be dealt with at a meeting of the Association requires a Special Resolution of the Association, the Secretary must, at least 14 days before the date fixed for the holding of the meeting, provide electronic written notice specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (b) If the nature of the business proposed to be dealt with at a meeting of the Association requires a Special Resolution of the Association, the Secretary must, at least 21 days before the date fixed for the holding of the meeting, send notice to each member in the way provided in clause 32.5(a) specifying, in addition, the intention to propose the resolution as a Special Resolution.
- (c) No business other than that specified in the notice calling a meeting of the Association may be transacted at the meeting except, for an annual general meeting, business that may be transacted under clause 32.1(e).

- (d) A member desiring to bring any business before a meeting of the Association may give written notice of that business to the Secretary, who must include that business in the next notice calling a meeting of the Association given after receipt of the notice from the member.

32.6. Making of decisions

- (a) A question arising at a meeting of the Association is to be decided on a show of hands, or by oral indication of vote, or other method to accommodate persons attending by teleconference or other means.
- (b) Unless before or on the declaration of the show of hands (or other method for voting) a poll is demanded, a declaration by the person presiding that a resolution has been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the Association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (c) At a meeting of the Association, a poll may be demanded by the person presiding or by not less than two Committee Members present in person or by proxy at the meeting.
- (d) If a poll is demanded at a meeting of the Association, the poll must be taken:
 - (i) immediately if the poll relates to the election of the person to preside at the meeting or to the question of an adjournment; or,
 - (ii) in any other case, in the way and at the time before the close of the meeting that the person presiding directs, and the resolution of the poll on the matter is taken to be the resolution of the meeting on that matter.
- (e) A poll will take the following form:
 - (i) A scrutineer will be appointed by the presiding person;
 - (ii) For Committee Members physically located in the place that the meeting is being held, ballot papers will be distributed and marked to record the vote for or against the proposal;
 - (iii) Committee Members attending via teleconference or videoconference facilities, or other means of connecting from a separate location, will email their votes for or against the proposal to both the scrutineer and presiding person at one or more agreed email addresses within 24 hours after the end of the meeting (or such other shorter time as is agreed by the Committee);
 - (iv) The voting papers and email printouts will be assembled, counted by the scrutineer, and checked by the presiding person;
 - (v) The presiding person has a second or casting vote to settle a tie; and,
 - (vi) The Secretary will record the numbers of votes for, against, abstaining, informal, and not received (as relevant).

32.7. Observers

- (a) The Chairperson or a majority of Committee Members may invite any person to attend all or part or parts of a meeting of the Association as non-voting observers.
- (b) The Chairperson will ensure that observers are made aware before or, that is not possible, at the commencement of their attendance, or at any appropriate time during the course of their attendance, that they may be required to absent themselves from the meeting.

- (c) A Representative may at any time during a meeting:
 - (i) indicate their view that all or some observers should not be present at all or for parts of the meeting;
 - (ii) request that a decision be made to exclude the observers during those parts of the meeting; and,
 - (iii) if the majority of Committee Members decides against exclusion, request a decision a second time relating to the same issue, but if the majority of Committee Members again decides against exclusion that decision is final and binding.

32.8. Appointment of proxies

- (a) Each Committee member is entitled to appoint another person as proxy by notice given to the Secretary no later than 24 hours before the time of the meeting for which the proxy is appointed.
- (b) The notice appointing the proxy must be substantially in the form set out in Appendix 2.

32.9. Voting

- (a) Subject to clause 32.9(c), on any question arising at a meeting of the Association a Committee member has one vote only.
- (b) All votes must be given personally or by proxy but no member may hold more than five proxies.
- (c) If the votes on a question at a general meeting are equal, the person presiding is entitled to exercise a second or casting vote.
- (d) A member or proxy is not entitled to vote at any meeting of the Association unless all money due and payable by the member or proxy to the Association has been paid, other than the amount of the annual subscription payable for the then current year.

Part 1.7 Reporting, Accounting and Auditing

33. Access Canberra, ACNC and Annual Reporting

- 33.1. The Secretary will notify Access Canberra, using the correct form, of changes to the Association's name, rules and objects, Committee particulars or to the appointment of the Public Officer within one month of the change, and registered office/address within 7 days of the change occurring.
- 33.2. The Secretary will notify the ACNC of any changes to the Association's registration details, including the legal name, address for service, Responsible People or its governing documents.
- 33.3. The Association shall ensure that the Annual Information Statement is submitted to the ACNC by the due date (anticipated to be 31 December of each year) with the audited financial statement to maintain registered charitable status.
- 33.4. The Association is not required to submit an annual return to the Access Canberra, subject to submission of the AIS referred to in clause 33.3.
- 33.5. The Association, as a charity registered with the ACNC, will ensure at all times it meets the ACNC Governance Standards and its Responsible People are aware of their duties and comply with them.

34. Finances

- 34.1. The funds of the Association will be derived from:
- (a) the membership fees;
 - (b) special levies on members;
 - (c) profits from the holding of events and national conferences
 - (d) profits from the provision of data and sale of publications and other goods;
 - (e) grants;
 - (f) sponsorship;
 - (g) donations and gifts, including bequests; and,
 - (h) other sources determined by the Committee by resolution at a meeting of the Association, subject to section 114 of the Act.
- 34.2. Subject to clause 4, the income and property of the Association will be used and applied solely in promotion of its objects and purposes, and no portion will be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to members, directors, or trustees of the Association.
- 34.3. The Treasurer will ensure that:
- (a) the Association maintains proper accounting records in accordance with applicable Australian Accounting Standards of all receipts, payments, assets and liabilities relating to the Association, and of all matters necessary for showing a true state of affairs and condition of the Association;
 - (b) all moneys received by the Association are deposited as soon as practicable and without deduction to the credit of the Association's bank accounts;
 - (c) moneys received from sources not eligible for tax deductible status, such as bequests and sponsorship, are not directed to the Association's Gift Fund; and,
 - (d) a receipt is issued as soon as practicable after receiving moneys.
- 34.4. Subject to clause 4 and a resolution passed by the Committee at a meeting of the Association, the funds of the Association must be used for the objects and purposes in the way that the Committee decides.
- 34.5. The Association will be responsible for meeting the costs of activities that are carried on in the name of the Association, provided that the Committee has approved the conduct of such activities and has agreed to meet the costs of them.
- 34.6. Payments made on behalf of the Association must be approved by two people who are either members of the Committee or employees of the Association authorised by the Committee to approve such payments.
- 34.7. Nothing in these rules will prevent the payment in good faith of remuneration to a person, whether that person is a Committee member or otherwise:
- (a) in return for any services actually rendered to the Association;
 - (b) for goods supplied in the ordinary and usual way of recovery of expenses;
 - (c) as repayment for out-of-pocket expenses;
 - (d) in payment of interest at a rate not exceeding the rate for the time being charged on overdrawn accounts by bankers in Australia, on money borrowed from any member of the Association; or,

- (e) as reasonable and proper rent for any premises let to the Association.

35. Staff

- 35.1. The Association may employ or engage such employees, contractors, advisors, agents and officers, and under such conditions, as are approved by the Committee.

36. Audit of accounts

- 36.1. At each annual general meeting, the Committee will appoint a person who:
- (a) is not a member of the Committee;
 - (b) has not prepared or assisted with the preparation of the accounts; and,
 - (c) meets the requirements of the Act,
- to carry out an annual audit of the Association's financial records for that current financial year.
- 36.2. The Committee will take reasonable steps to ensure that the audit is completed and the auditor provides the following documents at least 14 days before the next annual general meeting, so that the documents required by section 73(1) of the Act can be provided to members:
- (a) a audited statement of the Association's accounts for the relevant financial year;
 - (b) a copy of the auditor's report in relation to the Association's accounts for that financial year.
- 36.3. If the appointed auditor is unable to complete the audit for any reason (including if the auditor no longer meets the requirements of clause 36.1), the Committee will appoint another person who meets the requirements of clause 36.1 to complete the audit.
- 36.4. A person who has completed an appointment as auditor is, subject to the Act, immediately eligible for re-appointment, provided the requirements of clause 36.1 are still satisfied.

37. Common seal

- 37.1. The common seal of the Association must be kept in the custody of the Secretary.
- 37.2. The common seal must not be attached to any instrument except by the authority of the Committee and the attaching of the common seal must be attested by the signatures of two members of the Committee.

38. Custody of books

- 38.1. Subject to the Act, the Regulation and these rules, the Secretary must keep in his or her custody or under his or her control all records, books, and other documents relating to the Association.

39. Inspection of books

- 39.1. The records, books and other documents of the Association must be open to inspection at a place in the ACT, free of charge, by a member of the Association at any reasonable hour, upon reasonable notice being given by the member to the Secretary.

40. Service of notice

- 40.1. The Association may serve a notice by any of the methods described in section 248 of the *Legislation Act*.
- 40.2. Documents, including notices, are taken to have been delivered at the times identified in section 250 of the *Legislation Act*.
- 40.3. It is the responsibility of members to ensure that their details, including address for notices, is kept up to date in the register of members.

41. By-laws

- 41.1. The Committee may make such by-laws as it thinks fit in relation to the affairs of the Association that are not otherwise provided for in these rules.
- 41.2. By-laws must be raised, discussed and decided by vote at a meeting of the Association in accordance with clause 32.
- 41.3. A proposed by-law that has been passed by the Committee must be notified to all members as soon as is reasonably practicable.
- 41.4. A by-law will come into force one month after it has been notified to all members, unless before that date the Secretary receives a request from at least three members that the proposed by-law should be amended or repealed, in which case the proposed by-law must be reconsidered by the Committee.
- 41.5. After reconsideration of a proposed by-law in accordance with clause 41.4, the Committee may confirm, amend or repeal the proposed by-law, and, if the Committee decides to confirm or amend the by-law, notify all members of that decision, and the provisions of clause 41 apply again;
- 41.6. If a by-law that has been reconsidered and confirmed by the Committee is again the subject of a request for amendment or repeal, the matter will be referred to the next meeting of the Association, which will decide the matter finally by the vote of a simple majority of those present and eligible to vote.
- 41.7. The Secretary must make all rules and by-laws available to members on request.

42. Winding Up of Association

- 42.1. At the first meeting of the Association, the Association must pass a Special Resolution nominating:
 - (a) another association for section 92(1)(a) of the Act; or,
 - (b) a fund, authority or institution for section 92(1)(b) of the Act,in which it is to vest its surplus property in the event of the dissolution or winding up of the Association.
- 42.2. An association nominated under clause 42.1(a) must fulfil the requirements specified in clause 4 and section 92(2) of the Act.

Appendix 1

Application for Representing a Member of Association

Council of Heads of Australian Botanic Gardens Incorporated (incorporated under the *Associations Incorporation Act 1991*)

I,(full name of applicant)

of(address)

..... (occupation)

apply to become a representative of a member of the incorporated association. If I am admitted as a representative, I agree to be bound by the rules of the Association for the time being in force.

.....

(Signature of applicant)

Date

I, (full name)

a member representative of the Association, nominate the applicant, who is personally known to me, to represent a member of the Association.

.....

(Signature of proposer)

Date

I, (full name)

a member representative of the Association, second the nomination of the applicant, who is personally known to me, to represent a member of the Association.

.....

(Signature of seconder)

Date

Appendix 2

Form of appointment of proxy

I, (full name)

of (address)

Representative of (name of member)

a member representative of the **Council of Heads of Australian Botanic Gardens Incorporated**

appoint (full name of proxy)

of (address)

Representative of (name of member)

a member representative of that incorporated association, as my proxy to vote for me on my behalf at the meeting of the Association (annual general meeting or other general meeting, as the case may be) to be held on and at any adjournment of that meeting.

*My proxy is authorised to vote in favour of/against (delete as appropriate) the resolution (insert details).

.....

(Signature of Representative appointing proxy)

(*To be inserted if desired.)

Date

Note A proxy vote may not be given to a person who is not a member of the Association

Appendix 3

Election of the Committee Members and Office Bearers Nomination Form

Annual General Meeting -

Nominations are invited for Committee Members and/or office bearers for the Council of Heads of Australian Botanic Gardens Incorporated (incorporated under the Associations Incorporation Act 1991)

Nomination

I, (*name of member nominating*) 1.....

Organisation (if applicable)

Address

..... Postcode

Phone (w) Mobile Fax

Email

and

I (*name of member seconding*) 2.....

Organisation (if applicable)

Address

..... Postcode

Phone (w) Mobile Fax

Email

Nominate (name of nominee)

For the position of:

☐ Chairperson ☐ Secretary ☐ Treasurer

Signed

Nominator 1..... Date

Seconder 2 Date

Nomination Acceptance

I (*nominee*)

Of (*address*).....

accept the nomination as indicated above.

Nominee's signatureDate.....