Corporations Law

A Company limited by Guarantee not having a Share Capital

CONSTITUTION

Bird Observation & Conservation Australia

ACN 005 068 842

7/06/2010

INDEX

1.0	**INTERPRETATION**	3
2.0	**PRELIMINARY**	4
3.0	**MEMBERS' LIABILITY**	4
4.0	**PRINCIPAL OBJECTS**	4
5.0	**MEMBERSHIP**	5
6.0	**DISCIPLINE, SUSPENSION AND EXPULSION OF MEMBERS**	6
7.0	**DISPUTES AND MEDIATION**	8
8.0	**ANNUAL GENERAL MEETING**	9
9.0	**SPECIAL GENERAL MEETING**	10
10.0	**PROCEEDINGS AT MEETINGS**	11
11.0	**APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS**	14
12.0	**POWERS AND DUTIES OF THE BOARD**	15
13.0	**PROCEEDINGS OF THE BOARD**	15
14.0	**CHIEF EXECUTIVE OFFICER**	19
15.0	**EXECUTION OF DOCUMENTS**	19
16.0	**INSPECTION OF RECORDS**	20
17.0	**NOTICES**	20
18.0	**WINDING UP**	21
19.0	**INDEMNITY**	21
20.0	**RULES AND REGULATIONS**	22
21.0	**ALTERATION TO THIS CONSTITUTION**	22
22.0	**BRANCHES AND AFFILIATED GROUPS**	22
23.0	**FUND FOR BIRDS**	23
24.0	**AUSTRALIAN BIRD ENVIRONMENT FOUNDATION**	25

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1.0 INTERPRETATION

In this Constitution:

1.1 "Affiliated Group" means such group or body corporate that has similar objects to the Company and which is approved by the Board as an Affiliated Group.

1.2 "Board" means the Company Board.

1.3 "Branches" means regional groups of Members approved by the Board under conditions determined by the Board from time to time.

1.4 "Company" means Bird Observation & Conservation Australia (formerly Bird Observers Club of Australia) also known as BOCA ACN 005 068 842.

1.5 "Law" means the Corporations Act 2001 as amended and the Regulations made thereunder.

1.6 "Member(s)" means Member(s) of the Company.

1.7 "Rules and Regulations" means those Rules or Regulations passed by resolution of the Board as authorised by this Constitution.

1.8 "Trust", means the Trust established by the Company, which is known as the 'Australian Bird Environment Foundation' ("ABEF") to be overseen by a body of Trustees ("the Trustees") who shall be associated with the Company.

1.9 The Law applies in relation to this Constitution as if it were an instrument made under that Law as in force on the day when this Constitution became binding on the Company.

1.10 Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Law, the same meaning as in that provision of the Law.

1.11 As and from the date of its adoption by the Members in accordance with the meeting dated the 12th May 2007, this Constitution replaces the Constitution which was adopted by the Members on the 10th November 2001 and which is hereby repealed.

2.0 PRELIMINARY

2.1 Subject to the Law, the Company has the legal capacity and powers of an individual, and also all the powers of a body corporate, including the power to:

2.1.1 accept and refuse membership;
2.1.2 grant a floating charge over the property of the Company;
2.1.3 arrange for the Company to be registered or recognised as a body corporate in any place outside its jurisdiction of registration; and
2.1.4 do anything that it is authorised to do by any other law (including the law of a foreign country).

2.2 Each of the provisions of the sections or sub-sections of the Law which would, but for this Clause, apply to the Company as a replaceable rule within the meaning of the Law are displaced and do not apply to the Company and in lieu this Constitution shall govern all the rights, duties and obligations of the Company and its Officers and its Members provided only that the provisions of the Law are not abrogated.

3.0 MEMBERS' LIABILITY

3.1 The Company is a company limited by guarantee without 'Limited' in its name.

3.2 The liability of the Members is limited by guarantee.

3.3 In the event of the Company being wound up every Member who is currently a Member, other than a Junior Member, or whose membership ceased within the preceding twelve month period, undertakes to contribute to the assets of the Company for the purposes of payment of the debts and liabilities of the Company contracted before the Member ceased to be a Member and for the costs charges and expenses of winding up and for adjustment of the rights of contributors among themselves of such amount as may be required but not exceeding twenty dollars.

4.0 PRINCIPAL OBJECTS

4.1 The principal objects for which the Company is established are:

4.1.1 to promote public understanding of the ecological and economic importance of Australian birds and their habitat;

4.1.2 to monitor and investigate threats to the survival of Australian birds and their habitats and to take action to maintain, protect or enhance that survival;

4.1.3 to develop and promote educational programs and materials which engender attitudes sympathetic to the protection, well-being and appreciation of Australian birds;

4.1.4 to encourage the scientific study and research of Australian birds and their habitats, so as to facilitate their conservation and well-being; and

4.1.5 to foster ethical bird observing as a social and individual activity directed to benefit Australian birds.

4.2 For the purpose of carrying out the principal objects the income and property of the Company shall be applied solely towards the promotion of the principal objects of the Company as set forth in this Constitution. No portion thereof shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to Members provided that nothing herein contained shall prevent the payment in good faith of remuneration to any officers or employees of the Company or to any Member in return for any services actually rendered to the Company nor for goods supplied in the ordinary and usual way of business, nor prevent the payment of interest at a rate not exceeding the rate for the time being fixed for the purpose of this paragraph by the Law on money borrowed from any Member, or reasonable and proper rent for premises demised or let by any Member to the Company.

5.0 MEMBERSHIP

5.1 The Company shall keep a register of Members with their full names and addresses, the class of membership and the date of commencement of their membership.

5.2 Applications for membership shall be in the prescribed form.

5.3 The Company may admit as a Member any natural person or incorporated or unincorporated body that agrees to be bound by this Constitution:

5.3.1 provided however, that no such Member shall be able to vote on any matter under this Constitution until a period of one calendar month has elapsed from the date upon which membership has been conferred by the Company; and

5.3.2 provided that the person or body pays the appropriate membership fee.

5.4 Membership dates from the date of acceptance by the Board and membership is renewable on the expiry of the nominated term.

5.5 The Company may reject any application for membership in any category.

5.6 Membership shall cease upon the happening of any of the following events, namely:

5.6.1 if a Member dies;
5.6.2 if the Member resigns by writing under his or her hand addressed to the Chief Executive Officer;
5.6.3 if the Member's subscription shall be in arrears for a period of more than three months; or
5.6.4 if the membership is not renewed or is cancelled in accordance with Clause 6.

5.7 The Board may make Rules with respect to different categories of membership including, but not restricted to, Honorary Life Members, Ordinary Members, Family Members and Junior Members.

5.8 Persons may be elected by the Company on the recommendation of the Board from time to time, as Honorary Life Members on the grounds that they have made a major contribution to the objects of the Company or provided significant service to ornithology. The number of Honorary Life Members at any time shall be limited to ten or such other number as determined by the Board.

5.9 The Company shall have the right to levy annual subscriptions and the Board may determine the level of subscription (if any) from time to time for each category of membership.

6.0 DISCIPLINE, SUSPENSION AND EXPULSION OF MEMBERS

6.1 Notwithstanding anything in the preceding clauses, the Board may by resolution, refuse to renew or may cancel any membership upon being satisfied that any of the following grounds exist:

6.1.1 that the person concerned has made or caused to be made or published false, unfair, extravagant, fraudulent, derogatory or harmful statements concerning the Company or its activities or its Board, Office-Bearers or staff in the performance of their duties;
6.1.2 that the person concerned has, while being a Member, expressed views or acted in a manner inconsistent with or detrimental to the aims and objectives or expressed policy of the Company; or

6.1.3 that the person concerned has been convicted of an offence against a provision of relevant wildlife legislation.

6.2 The power under Clause 6.1 shall not be interpreted so as to prevent fair and honest criticism nor shall it apply to any written material forwarded to the Company nor to matters raised in good faith at any General Meeting.

6.3 A resolution of the Board under Clause 6.1 does not take effect unless:

6.3.1 at a meeting of Board held in accordance with Clause 6.4 the Board confirms the resolution; and

6.3.2 if the Member exercises a right of appeal to the Company under this rule the Company confirms the resolution in accordance with this rule.

6.4 A meeting of the Board to confirm or revoke a resolution passed under Clause 6.1 must be held not earlier than 14 days and no later than 28 days after notice has been given to the Member in accordance with Clause 6.5.

6.5 For the purpose of giving notice in accordance with Clause 6.4 the Chief Executive Officer must as soon as practicable cause to be given to the Member a written notice:

6.5.1 setting out the resolution of the Board and the grounds on which it is based;

6.5.2 stating that the Member, or his or her representative, may address the Board at a meeting to be held not earlier than 14 days and no later than 28 days after the notice has been given to that Member;

6.5.3 stating the date, place and time of that meeting;

6.5.4 informing the Member that he or she may do one or both of the following:

6.5.4.1. attend that meeting; and/or

6.5.4.2. give to the Board before the date of that meeting a written statement seeking the revocation of the resolution;and

6.5.5 informing the Member that, if at that meeting, the Board confirms the resolution, he or she may no later than seven days after receiving such notice from the Chief Executive Officer, give the Chief Executive Officer a notice to the effect that he or she wishes to appeal to the Company in General Meeting against the resolution.

6.6 At a meeting of the Board to confirm or revoke a resolution passed under Clause 6.5, the Board must:

6.6.1 give the Member, or his or her representative, an opportunity to be heard;
6.6.2 give due consideration to any written statement submitted by the Member; and
6.6.3 determine by resolution whether to confirm or to revoke the resolution.

6.7 If at the meeting of the Board, the Board confirms the resolution, the Member may, no later than seven days after receiving such notice from the Chief Executive Officer, give the Chief Executive Officer a notice to the effect that he or she wishes to appeal to the Company in General Meeting against the resolution.

6.8 If the Chief Executive Officer receives a notice under Clause 6.7 he or she must immediately notify the Board and the Board must convene a General Meeting to be held as soon as practicable but with a minimum of 21 days notice to Members

6.9 At a General Meeting convened under Clause 6.8:

6.9.1 no business other than the question of the appeal may be conducted;
6.9.2 the Company must place before the meeting details of the grounds for the resolution and the reasons for the passing of the resolution;
6.9.3 the Member, or his or her representative, must be given an opportunity to be heard; and
6.9.4 the Members present must vote by secret ballot on the question whether the resolution should be confirmed or revoked.

6.10 A resolution is confirmed if, at the General Meeting, no less than two-thirds of the voting Members present in person or by proxy vote in favour of the resolution. In any other case, the resolution is revoked.

7.0 DISPUTES AND MEDIATION

7.1 The grievance procedure set out in this Clause applies to disputes under this Constitution between:

7.1.1 a Member and another Member; or
7.1.2 a Member and the Company.

7.2 The parties to the dispute must meet and discuss the matter in dispute, and if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.

7.3 If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within ten days, hold a meeting in the presence of a mediator.

7.4 The mediator must be:

7.4.1 a person chosen by agreement between the parties; or
7.4.2 in the absence of agreement:
7.4.2.1. in the case of a dispute between a Member and another Member, a person appointed by the Board; or
7.4.2.2. in the case of a dispute between a Member and the Company, a person who is a mediator appointed or employed by the Dispute Settlement Centre of Victoria (Department of Justice).

7.5 A Member can be a mediator.

7.6 The mediator cannot be a Member who is a party to the dispute.

7.7 The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.

7.8 The mediator, in conducting the mediation, must:

7.8.1 give the parties to the mediation process every opportunity to be heard;
7.8.2 allow due consideration by all parties of any written statement submitted by any party; and
7.8.3 ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.

7.9 The mediator must not determine the dispute.

7.10 If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Law or otherwise at law.

8.0 ANNUAL GENERAL MEETING

8.1 An Annual General Meeting shall be held once in each financial year and at a time, date and place to be specified by the Board provided only that it shall be held within five months of the end of each financial year.

8.2 Notice specifying the place, the day and hour of the Annual General Meeting and the general nature of the business of the meeting shall be

given to every Member and to the auditor no less than 40 days before the Annual General Meeting.

8.3 The Agenda for the Annual General Meeting, and if required, ballot papers for the election of Directors shall be given to every voting Member no less than 21 days prior to the Annual General Meeting.

8.4 The business of the Annual General Meeting shall be:

8.4.1 to receive and consider Financial Report, Auditors' Report and the Report of Directors for the preceding year;
8.4.2 to appoint Auditors for the ensuing year;
8.4.3 to declare the election of Directors for the ensuing year;
8.4.4 to deal with any matter submitted by a Member to the Chief Executive Officer of which 28 days notice has been given; and
8.4.5 to discuss any other matter agreed by the meeting but which may not be resolved.

9.0 SPECIAL GENERAL MEETING

9.1 A Special General Meeting shall be convened by the Board on the request of:

9.1.1 three Directors; or
9.1.2 at least 100 voting Members.

9.2 The request must:

9.2.1 be in writing;
9.2.2 state any resolution to be proposed at the meeting;
9.2.3 be signed by the Members making the request; and
9.2.4 be given to the Company.

9.3 Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.

9.4 The Board must call the Special General Meeting within 21 days after the request is given to the Company. The Special General Meeting is to be held no later than two months after the request is given to the Company but with a minimum of 21 days notice to Members.

9.5 With the notice for a Special General Meeting, the Company shall provide the voting Members with the following:

9.5.1 the agenda containing the business to be transacted at the meeting; and

9.5.2 all documentation informing the voting Members about the subject matter of the meeting.

9.6 All business that is conducted at a Special General Meeting and all business that is conducted at the Annual General Meeting, except for business conducted under the Constitution as ordinary business of the Annual General Meeting, is deemed to be special business.

10.0 PROCEEDINGS AT MEETINGS

10.1 No business shall be transacted at any meeting unless a quorum of voting Members is present at the time of the meeting**.**

10.2 Twenty voting Members as are present in person or by proxy shall be a quorum for the meeting.

10.3 Persons attending as proxies are counted in the number but a Member attending both as a Member and a proxy shall only be counted once for the counting of the quorum.

10.4 If a quorum is not present within half an hour from the time appointed for the meeting:

10.4.1 where the meeting was convened upon the request of Members, then the meeting shall be dissolved; or

10.4.2 in any other case:

10.4.2.1. the meeting stands adjourned to such day, and at such time and place, as the Board determine or, if no determination is made by the Board, to the same day in the next week at the same time and place; and

10.4.2.2. if at the adjourned meeting a quorum is not present within half an hour from the time appointed for such adjourned meeting, then the meeting shall be dissolved.

10.5 The President or his nominee shall chair any meeting but where the Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act for all or part of the meeting, the Members present shall elect one of their number to be Chair of the meeting (or part of it).

10.6 The Chair shall adjourn a meeting from time to time and from place to place if the Members present with a majority of votes that may be cast at that meeting agree or direct the Chair to do so. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

10.7 When a meeting is adjourned for more than 30 days, notice of the adjourned meeting shall be given as in the case of the original meeting.

10.8 Except as provided by Clause 10.7, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

10.9 Subject to Clause 21 at any meeting a resolution put to the vote of the meeting shall be decided on a show of hands and pass with a simple majority of votes unless a poll is (before a vote is taken or before or immediately after the declaration of the result of the show of hands) demanded:

10.9.1 by the Chair; or
10.9.2 by at least five Members entitled to vote on the resolution.

10.10 Unless a poll is so demanded, a declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

10.11 If a poll is duly demanded, it shall be taken in such manner and at once after either an interval or adjournment or otherwise as the Chair directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

10.12 In the case of an equality of votes, whether on a show of hands or on a poll, the Chair of the meeting at which the show of hands takes place or at which the poll is demanded, has a casting vote in addition to any vote that the Chair may have individually as a Member.

10.13 Subject to any rights or restrictions for the time being attached to any category or categories of membership:

10.13.1 at a meeting, each Member entitled to vote may vote in person or by proxy or by a representative or by attorney; and
10.13.2 on a show of hands every person present who is a Member and/or a proxy or an attorney or a representative of a Member has one vote, and on a poll every person present in person or by proxy or attorney or by a representative has one vote for each membership he holds.

10.14 In cases other than family membership voting Members shall have one vote. In cases of family membership two votes shall be recorded.

10.15 No Member under eighteen years of age shall have a right to vote at any meeting.

10.16 An incorporated or an unincorporated body which is a Member is entitled to one vote at a meeting, and has the right if it so wishes to nominate a representative for election as a Director.

10.17 A Member is not entitled to vote at a meeting unless all sums presently payable by him/her in respect of membership has been paid.

10.18 A proxy, representative or attorney may be appointed for all meetings or for any number of meetings or for a particular purpose.

10.19 Any instrument of proxy in which the name of the appointee is not filled in will be deemed to be given in favour of the Chair.

10.20 An instrument appointing a proxy shall be in writing under the hand of the appointor or his/her attorney duly authorised in writing or, if the appointor is a body corporate, in accordance with the Law or under the hand of an officer or attorney duly authorised.

10.21 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote in the resolution except as specified in the instrument.

10.22 An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

10.23 An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited, no less than 48 hours before the time for holding the meeting or adjourned meeting which the person named in the instrument proposes to vote, at the registered office of the Company or at such other place in Australia as is specified in the notice convening the meeting.

10.24 A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, if no intimation in writing of the death, unsoundness of mind, revocation

or transfer has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

11.0 APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS

11.1 The number of Directors shall be no less than seven and no more than the number resolved by the Board up to a maximum of ten.

11.2 A person cannot become a Director unless such person has been a financial Member for a period of at least three months.

11.3 No person who is an employee of the Company shall be eligible for election to the Board.

11.4 Any voting Member may nominate another Member for election as a Director provided the nominee accepts such nomination and the nomination is received by the Chief Executive Officer no less than 28 days prior to the Annual General Meeting.

11.5 Subject to Clause 11.6, the poll for the election of Directors shall be declared at the Annual General Meeting and the Directors elected shall hold office for a period of three years from the closure of that Annual General Meeting until the closure of the Annual General Meeting three years hence.

11.6 The process of selecting Directors to retire shall be as follows:
Directors appointed to fill a casual vacancy since the last Annual General Meeting shall be first selected followed by those Directors who have served longest since last elected provided that at any time no Directors shall serve more than three years before facing re-election

11.7 The Board may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Board , but so that the total number of Directors does not at any time exceed ten.

11.8 The Company may by resolution of a Special General Meeting of Members remove any Director.

11.9 A Director shall not be paid any fee and no remuneration or other benefit in money or in kind shall be paid or given by the Company in respect of carrying out the duties of office as Director.

11.10 Subject to approval by the Board, a Director may be paid out of pocket expenses including travelling and other expenses properly incurred by them in connection with the business of the Company.

11.11 In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Law, the office of a Director becomes vacant if the Director:

11.11.1 becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
11.11.2 resigns office by notice in writing to the Company;
11.11.3 is absent without the consent of the Board from meetings of the Board held during a period of three months; or
11.11.4 becomes a paid employee of the company.

11.12 Directors shall be elected by postal vote or other means of communication acceptable to the Board. The vote shall close half an hour after the start of the Annual General Meeting.

12.0 POWERS AND DUTIES OF THE BOARD

12.1 The business of the Company shall be managed by the Board who have a general power to do anything in the best interests of the company but not contrary to this Constitution.

12.2 Subject to Clause 12.1, the Board may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

12.3 The Board may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board), for such period and subject to such conditions as they think fit.

12.4 All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts of money paid by the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two Directors or in such other manner as the Board determine.

12.5 The Board may establish or remove Branches or Affiliated Groups as it sees fit upon such terms and conditions as it shall establish for that purpose.

13.0 PROCEEDINGS OF THE BOARD

13.1 The Directors shall meet as a Board for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit. By using available technology any meeting of the Board either as a Board or in committees may be held without the Board being physically together in one place. A resolution passed by such a meeting will be deemed to have been passed at a meeting of the Board held on the day on which and at the time at which it was held.

13.2 A Director or the Chief Executive Officer on the requisition of a Director shall be entitled to convene a meeting of the Board at any time. Notice of every Board meeting shall be given to each Director and alternate Director (refer clause 13.11).

13.3 A Director present at the commencement of a meeting of Board held using technology will be conclusively presumed to have been present and, subject to other provisions of this Constitution, to have formed part of the quorum throughout the meeting unless they declare that they are leaving the meeting.

13.4 Any minutes of a meeting of the Board held using technology purporting to be signed by the Chair of that meeting or by the chair of the next succeeding meeting of the Board will be sufficient evidence of the observance of all necessary formalities regarding the convening and conduct of the meeting.

13.5 When by the operation of Clause 13.1 a resolution is deemed to have been passed at a meeting of the Board, that meeting will be deemed to have been held at such place as is determined by the Chair of the relevant meeting, provided that at least one of the Directors who took part in the meeting was at such place for the duration of the meeting.

13.6 At a meeting of Board, the number of Directors whose presence is necessary to constitute a quorum shall be no less than fifty per centum (50%) of the current number of Directors entitled to attend such meeting.

13.7 A Director or alternate Director interested in a contract or arrangement within the meaning of Clause 13.6 shall be counted in a quorum notwithstanding his interest.

13.8 Subject to this Constitution, questions arising at a meeting of Board shall be decided by a majority of votes of Directors present and voting and any such decision shall for all purposes be deemed a decision of the Board.

13.9 No Director shall be disqualified by his/her office from holding any other office or from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or arrangement

entered into by or on behalf of the Company in which any Director shall be in any way interested be avoided, nor shall any Director be liable to account to the Company for any profit arising from such office or place of profit or realised by any such contract or arrangement by reason only of such Director holding that office or of the fiduciary relationship thereby established, but the nature of a Directors s interest must have first been disclosed by him/her in any manner required by the Law.

13.10 A Director must declare his/her interest, may not take part in any meeting and may not as a Director vote in respect of any contract arrangement in which he/she is interested in the manner described in Clause 13.9.

13.11 Subject to the approval of the Board a Director may nominate a person for appointment by the Board as their alternate during a defined period of absence.

13.12 An alternate Director is entitled to notice of meetings of the Board and, if the appointor is not present at such a meeting, is entitled to attend and vote in his/her stead. If the alternate Director is already a Director of the Company he/she shall be entitled to vote on their own behalf as well as on behalf of the Director appointing them, but for the purpose of determining whether a quorum is present, they shall be counted only once.

13.13 An alternate Director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate Director shall be deemed to be the exercise of the power by the appointor.

13.14 The appointment of an alternate Director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the alternate Director has not expired, and terminates in any event if the appointor vacates office as a Director.

13.15 In the event of a vacancy or vacancies in the office of a Director or offices of Directors, any remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Board, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum or of convening a General Meeting of the Company.

13.16 The Directors shall elect one of their number to be President of the Company and as such to chair Board meetings and Company meetings. A Director elected President shall serve no more that three consecutive years in that office but may be re-elected President for a further term following a break of at least one year

13.17 If at any meeting the President is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling or unable to act for all or part of the meeting, then the Directors present shall elect one of their number to chair the meeting (or part of it).

13.18 The Board may establish such standing and special purpose committees as they consider appropriate.

13.19 Committees shall exercise the powers delegated in accordance with any directions of the Board and a power so exercised shall be deemed to have been exercised by the Board. Committees are required to report their deliberations to the Board.

13.20 The Board may appoint a person to chair meeting of committees and failing this members of a committee may elect one of their number to chair their meetings.

13.21 When a Board Committee meeting is held and:

13.21.1 a chair has not been elected as provided by Clause 13.20; or

13.21.2 the chair is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling or unable to act for all or part of the meeting, the members present may elect one of their number to be chair of the meeting (or part of it).

13.22 A Board Committee may meet and adjourn as it thinks proper.

13.23 Questions arising at a meeting of a Board Committee shall be determined by a simple majority of votes of the Directors present and voting.

13.24 In the case of a circular resolution if all the Directors entitled to vote on such a resolution have signed a document containing a statement that they are in favour of that resolution in the terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the Board held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Director signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director.

13.25 For the purposes of Clause 13.24, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

13.26 All acts done at any Board meeting or Board Committee or by any person acting as a Director are, notwithstanding that it is afterwards discovered

that there was some defect in the appointment of a person to be a Director or a Member of the Board Committee, or to act as, a Director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the Board Committee.

14.0 CHIEF EXECUTIVE OFFICER

14.1 The Board shall appoint a Chief Executive Officer for such term and upon such conditions as the Board determine.

14.2 The Chief Executive Office shall fulfil the duties of the Public Officer of the Company and shall also (unless [s]he delegate any one or more of the following duties with the express approval of the Board) keep:

14.2.1 minutes of the resolutions and proceedings of all Members meetings and Board meetings in records provided for that purpose together with a record of the names of persons present at those meetings;
14.2.2 Register of Members in which shall be entered the full name, address and other information as the Board decide;
14.2.3 a register recording details of authorised use of the Company Seal or of the execution of contracts and like documents by the Board or with the authority of the Board; and
14.2.4 such other records as may be required by the Law.

15.0 EXECUTION OF DOCUMENTS

15.1 The Board shall provide for the safe custody of the Seal.

15.2 The Seal shall be used only by the authority of the Board or of a Board Committee authorised by the Board to authorise the use of the seal. The use of the Seal is to be recorded in a Register.

15.3 The Company may execute a document using a Seal if the Seal is affixed to the document and the affixing of the Seal is witnessed by:

15.3.1 two Directors;
15.3.2 a Director and the Chief Executive Officer; or
15.3.3 a Director and another person appointed by the Board for this purpose.

15.4 The Company may execute a document without using a Seal if the document is signed by:

15.4.1 a Director and the Chief Executive Officer; or

15.4.2 a Director and another person appointed by the Board for this purpose.

16.0 INSPECTION OF RECORDS

16.1 The Company shall keep such membership, accounting and other records of the business of the Company as it is required to keep by the Law.

16.2 Minutes of Members' meetings will be open for inspection by any Member without charge.

16.3 A voting Member may inspect and take copies of the Register of Members or any entry in the Register at any reasonable time.

17.0 NOTICES

17.1 A notice may be given by the Company to any Member either:

17.1.1 by serving it on the Member personally;
17.1.2 by sending it by post or email to the address shown in the Register of Members or the address supplied by the Member for the purposes of serving notices;
17.1.3 by sending it by facsimile transmission to a facsimile number nominated by the Member for the purpose of serving notices on the Member, or
17.1.4 by using any other technology for transmitting text nominated by the Company and acceptable to the Member for the purposes of serving notices on the Member.

17.2 Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice and to have been affected, in the case of a notice of a meeting, three working days after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of delivery.

17.3 Where a notice is sent by facsimile, service of the notice shall be deemed to be served on receipt by the Company of a transmission report confirming successful transmission.

17.4 Where a notice is sent to the address provided for the purpose by email, service of the notice shall be deemed to be served with the record of the transmission kept by the Company

17.5 A notice may be given by the Company to the joint holders of a membership by giving the notice to the joint holder first named in the Register of Members in respect of the membership.

18.0 WINDING UP

18.1 If upon the winding up or dissolution of the Company there remains after satisfaction of all its debts any assets whatsoever the same shall not be paid to or distributed amongst the Members of the Company but shall be given or transferred to some institution or institutions having objects similar to the objects of the Company and whose Constitution shall prohibit the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Company under or by virtue of Clause 4.2 of this Constitution; such institution or institutions to be determined by Members of the Company at or before the time of dissolution and in default thereof by application to the Supreme Court of Victoria for determination of the matter.

19.0 INDEMNITY

19.1 To the extent permitted by law:

19.1.1 the Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability for costs and expenses incurred by that person in defending any Proceedings in which Judgment is given in that person's favour, or in which the person is acquitted or in connection with an application in relation to any Proceedings in which the Court grants relief to the person under the Law; and

19.1.2 the Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability incurred by the person, as an Officer of the Company or of a wholly owned subsidiary of the Company, to another person (other than the Company or a related body corporate of the Company) unless the liability arises out of conduct involving a lack of good faith.

19.2 To the extent permitted by law the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Company or of a subsidiary of the Company against a liability:

19.2.1 incurred by the person in his or her capacity as an Officer of the Company or a subsidiary of the Company or in the course of acting in connection with the affairs of the Company or a

subsidiary of the Company or otherwise arising out of the Officer's holding such office PROVIDED THAT the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of section 199B of the Law; or

19.2.2 for costs and expenses incurred by that person in defending Proceedings, whatever their outcome.

19.3 The term "Proceedings" means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his capacity as such an Officer or in the course of acting in connection with the affairs of the Company or a wholly-owned subsidiary or subsidiary of the Company or otherwise arising out of the Officer's holding such office (including proceedings alleging that he or she was guilty of negligence, default, breach of trust or breach of duty in relation to the company or a wholly-owned subsidiary or subsidiary of the Company.

19.4 The term Officer has the meaning given to that term in section 9 of the Law.

20.0 RULES AND REGULATIONS

20.1 For the better conduct of the Company, the Board shall introduce certain Rules and Regulations from time to time as they deem appropriate or as they may be directed by an agency of Government responsible for the environment and, provided only that they do not abrogate the provisions of this Constitution or of the Law or of any relevant Taxation Rulings, they shall be binding upon the Company and its Members, the Board and its Officers.

20.2 Such Rules and Regulations shall be introduced, amended or revoked at any time by a resolution of the Board and, where required, subject to the approval of the relevant Government agency.

21.0 ALTERATION TO THIS CONSTITUTION

21.1 No alteration shall be made to this Constitution unless passed by a majority of seventy-five per centum (75%) of the voting Members present and/or voting by proxy at a General Meeting.

22.0 BRANCHES AND AFFILIATED GROUPS

22.1 The Board may by resolution approve the establishment of a Branch of the Company at such location it considers appropriate.

22.2 Each Branch of the Company shall be required to accept the Rules and Regulations as established by the Board from time to time setting out the terms and conditions of governance with respect to that Branch.

22.3 The Board may suspend or disband any Branch in the event that it does not comply with the terms and conditions of governance as determined by the Board.

22.4 The Board may by resolution approve such applications for Affiliation as it deems appropriate.

23.0 FUND FOR BIRDS

23.1 The Company has established and separately maintains a public fund, called the Fund for Birds, for the specific purpose of supporting the principal environmental objects of the Company as stated in Clause 4.1.

23.2 The fund is established to receive gifts of money or property for this purpose and any money received because of such gifts must be credited to its bank account. The fund must not receive any other money into its account and must comply with subdivision 30 - 55E of the Income Tax Assessment Act 1997.

23.3 The Company must inform the Department of the Environment as soon as possible if:

23.3.1 the Company changes its name or the name of its fund;
23.3.2 there is any change to the membership of the management committee of the fund;
23.3.3 there has been a departure from the rules of the fund; or
23.3.4 the Company proposes any alterations to this Clause.

23.4 The Company agrees to comply with any rules that the Treasurer and the Federal Minister with the responsibility for the environment may make to ensure that gifts made to the fund are only used for the principal purpose of the fund.

23.5 The objective of the Fund for Birds is to support the principal environmental objects of the Company.

23.6 Members of the general public are to be invited to make gifts of money or property to the Fund for Birds to further the principal environmental objects of the Company.

23.7 A bank account or such other form of investment account as required and known as Bird Observation & Conservation Australia Fund for Birds is to be maintained to deposit money donated to the Fund for Birds, including interest accruing thereon, income derived from donated property and money from the realisation of such property which funds and which bank account shall be kept separate from other funds of the Company and from other bank accounts conducted by the Company.

23.8 Receipts are to be issued in the name of the Bird Observation & Conservation Australia Fund for Birds.

23.9 The Fund for Birds shall be operated on a non-profit basis. None of the money or property accumulated by the Fund for Birds shall be distributed to Members apart from proper remuneration for services rendered.

23.10 The Board shall be responsible for the proper conduct of the Fund for Birds and shall appoint a committee of no less than three Members, at least two of whom shall be members of the Board. A majority of the Members of the committee are required to be "responsible persons" as defined by the Guidelines to the Register of Environmental Organisations.

23.11 The committee shall be appointed annually by majority resolution of the Board and will be responsible for ensuring that the Fund for Birds is conducted in accordance with this Clause and the Guidelines for Organisations entered on the Register of Environmental Organisations.

23.12 Statistical information requested by the Department of the Environment on donations to the Fund for Birds shall be provided within four months of the end of the financial year. The data shall be provided in the prescribed form within four months of the end of the Commonwealth's financial year ending 30th June. An audited financial statement for the Company and the Fund for Birds shall be supplied with the annual statistical return. The statement shall provide information on the expenditure of public held monies and the management of public fund assets.

23.13 Any allocation of funds or property to other persons or organisations shall be made in accordance with the established purposes of the Company and not be influenced by the preference of the donor.

23.14 A sub-fund shall be created to receive donations to Australian Bird Environment Foundation (as set out in clause 24 herein) and from time to time other special purpose sub-funds may be created within the Fund.

23.15 In the event the Fund for Birds is wound up any surplus assets are to be transferred to another fund with similar objectives that is on the Register of Environmental Organisations.

23.16 This clause shall only be amended or revoked in accordance with the Law and subject to the prior written approval of the Department responsible for the environment.

24.0 AUSTRALIAN BIRD ENVIRONMENT FOUNDATION

24.1 The Trust is constituted pursuant to a Deed of Trust dated 5th April 1993 and amended on 28th March 1994 (and further amended in 4th December, 2001 by a Deed of Amendment). Variations of the Trust Deed require the consent of the Board. The Trustees have responsibility for the Trust Fund.

24.2 The Company shall make available to the Trustees donations to ABEF made through the public fund of the Company and may from time to time transfer funds from general revenue as authorised by the Board.

24.3 The Trustees shall keep the Company informed of the funds distributed and the status of the Trust Fund.

24.4 The Board shall appoint the Trustees of ABEF. At least one Trustee shall be a member of the Board appointed on an annual basis. The majority of the Trustees shall be Members of the Company.

24.5 The Board, when considering the appointment of Trustees shall request and have regard to any recommendation made by the existing Trustees.

24.6 The Board at any time:

24.6.1 may remove a Trustee from office; or may accept a resolution in writing by the majority of Trustees to remove a Trustee from office; or

24.6.2 may accept the resignation of a Trustee by notice in writing.

24.7 ABEF shall continue in perpetuity unless its funds have been exhausted by application in favour of its purposes as defined in the Trust Deed or if at any time the Trustees cease to carry out activities to which the Trust Fund should be applied, in which case the Trust Fund and any surplus money, investments and property, and any debts and liabilities of the Trust Fund, shall be transferred to or assumed by the Company and used for its environmental objects.

Approved at Annual General Meeting : 15th May, 2010