



AUSTRALIAN
GARDEN
HISTORY
SOCIETY

CONSTITUTION

OF THE AUSTRALIAN GARDEN HISTORY SOCIETY INC.

Incorporation Number Y0257143

under the *Associations Incorporation Act 2009* (NSW)

Version 2.0 – [*insert approval date*] 2021

In the spirit of reconciliation, the Australian Garden History Society acknowledges the traditional custodians of Country throughout Australia and their connections to land, sea and community, and pays its respects to their elders past, present and emerging.

FINAL DRAFT v2: 14 October 2021

EXPLANATORY NOTE FOR FINAL DRAFT
(This note will be removed from the approved version)

1. The previous (existing) version of the AGHS constitution is well out of date, and the need for a new constitution is now urgent. In particular:
 - a. it is based on NSW legislation in force in 1984, which has since been superseded or substantially updated.
 - b. it was written in a pre-internet era that makes no provision for electronic communications, video-conferencing, websites etc.
 - c. it does not fully reflect the way the AGHS now operates, leading to difficulties with compliance.
2. This proposed new constitution:
 - a. is based on the model constitution under current NSW law, with additional provisions tailored to the AGHS. Some of the ‘model’ clauses cannot be altered or removed.
 - b. allows for the ASIC registration now required under Australian law to facilitate AGHS operations throughout Australia.
3. A new constitution requires a special resolution, supported by at least 75% of those present and/or entitled to vote at an AGM. It is important to achieve consensus.
4. This draft of the proposed constitution follows the consultation with members and Branches in April/May 2021 and includes minor changes from the Consultation Draft resulting from that consultation.
5. Matters that may be of interest in the proposed constitution include the following:
 - a. the ‘objects’ of the AGHS have been revised (Clause 1.2(2)). By law, an incorporated association can only act within the scope of its objects, so it is important that these reflect the existing and future role of the AGHS.
 - b. the composition of National Management Committee includes a mix of elected and state/Branch representatives, but now allows for a Branch representative from all Branches rather than the shared NSW position.
 - c. some of the roles of the AGHS Secretary have been transferred to the National Executive Officer, to reflect existing practice.
 - d. the Branch structure has been maintained, save for the elevation of the Northern NSW sub-Branch to separate Branch status.
 - e. the pre-existing delegation to Branches has been incorporated into the constitution and revised (Clauses 5.1–5.6). Revisions include removal of a separate audit requirement for Branches, and removal of the outdated prohibition of advocacy by Branches.
 - f. the pre-existing Appendix for the Kindred Spirit Fund has been incorporated into the constitution, and revised (Clause 7.5) following consultation with the KSF committee.
6. This version of the constitution (FINAL DRAFT v2: 14 October 2021) will be circulated and/or made available before the AGM in November 2021, and forms the basis for the resolution to be put to members at the AGM to approve and substitute this version in lieu of the existing (old) constitution.

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Final Draft v2: 14 October 21

Part 1: INTRODUCTION

1.1 Definitions

(1) In this constitution:

AGHS means the Australian Garden History Society Inc. (Incorporation Number Y0257143), being the incorporated association to which this constitution applies.

Branch means a state or regional Branch of the AGHS established under Part 5 of this constitution.

NMC means the National Management Committee of the AGHS. It includes both **elected members** who are elected to the NMC under clause 3.3 and **Branch representatives** who are appointed to the NMC under clause 3.4.

national executive officer means:

- (a) the person holding office as the national executive officer appointed by the NMC under this constitution, or
- (b) if no person holds that office, the secretary of the AGHS.

secretary means:

- (a) the person holding office under this constitution as secretary of the AGHS, or
- (b) if no person holds that office, the public officer of the AGHS.

special general meeting means a general meeting of the AGHS other than an annual general meeting.

the Act means the *Associations Incorporation Act 2009* (NSW)

the Regulation means the *Associations Incorporation Regulation 2016* (NSW)

1.2 Mission and objects of the AGHS

(1) The mission of the AGHS is to promote awareness and conservation of significant gardens and cultural landscapes through engagement, research, advocacy and activities.

(2) The objects of the AGHS are:

- (a) to acknowledge and promote an awareness of the importance of looking after Country, including significant landscapes and plants, as part of the cultural heritage of its traditional custodians and their connections to land, sea and community.
- (b) to examine historic and significant gardens, plants and cultural landscapes in their widest social, cultural, historic, literary, artistic and scientific context.
- (c) to promote awareness of, and interest in, historic and significant gardens, plants and cultural landscapes as an important part of Australia's heritage through publications (including the AGHS journal), research and scholarly debate, talks, Branch activities, conferences, tours and other events.
- (d) to actively encourage and support the conservation of historic and significant gardens, plants, and cultural landscapes through research, accurate identification and recording, and best practice conservation and maintenance procedures, including through working bees and grants for works.
- (e) to acknowledge and promote an awareness of the impacts of climate change on historic and significant gardens, plants and cultural landscapes, and the challenges this creates for management, mitigation and adaptation.
- (e) to maintain an active and positive advocacy role for the recognition and protection of historic and significant gardens, plants and cultural landscapes whilst avoiding political bias.
- (f) to develop partnerships and exchange information with government authorities, academic institutions and public and community organisations with similar aims and objectives.

- (g) to maintain and administer one or more funds relevant to the objects of the AGHS, including for educational, scientific, literary and/or artistic projects, or programs to foster interest in historic and significant gardens and cultural landscapes with students or young professionals.
- (h) to provide members with a dynamic program of events and activities through a state and regional branch structure.
- (i) to provide a responsible, efficient and co-ordinated administration through the NMC, national executive officer, and a state and regional branch structure.

1.3 Structure of the AGHS

- (1) The AGHS is to be generally managed through an administrative structure comprising:
 - (a) the NMC elected or appointed under Part 3 of this constitution.
 - (b) a national executive officer appointed under clause 4.2.
 - (c) a public officer appointed under clause 4.3.
 - (d) the state and regional Branches established under Part 5, and
 - (e) any sub-committees and/or advisory committees appointed by the NMC under clause 3.11 and/or clause 4.4.
- (2) The different parts of the structure are intended to work together in a co-operative and co-ordinated manner, and in the overall interests of the AGHS. In the event of any dispute, the matter is to be finally determined by resolution of the NMC.
- (3) The NMC may from time to time vary the structure as it thinks fit.

1.4 AGHS is not-for-profit

- (1) Subject to the Act and the Regulation, the AGHS must apply its funds and assets solely in pursuance of the mission and objects of the AGHS and must not conduct its affairs so as to provide a pecuniary gain for any of its members.
- (2) Without limiting this clause, the AGHS and a member of the NMC or a Branch Committee must comply with clause 8.1 in seeking to avoid any actual or potential conflict of interest.

1.5 Operations throughout Australia

- (1) Although the AGHS is incorporated as an association under the Act in NSW, it is the intention of the AGHS to operate in all other states and territories.
- (2) The AGHS must hold and maintain registration as an Australian Registered Body, or such other registration as may be required from time to time under Australian law, to allow it to conduct its business and activities throughout Australia.
- (3) To the extent necessary, the office bearers of the NMC elected under clause 3.2(3) and the public officer appointed under clause 4.3(1), will hold equivalent positions in any Australian Registered Body.

Part 2: MEMBERSHIP

2.1 Membership generally

- (1) The AGHS may offer different classes of membership, including but not limited to:
 - (a) **Individual** – covering an individual person only.
 - (b) **Household** – covering all members of a family or group residing at the same address.
 - (c) **Corporate** – covering a commercial organisation such as a corporation, institution, association or business partnership.
 - (d) **Not-for-Profit** – covering an organisation that provides services to the community and does not operate to make a profit for its members.

- (e) **Student** – covering an individual person who is studying on a predominantly full-time basis at a recognised school, college or university.
- (f) **Honorary** – in accordance with clause 2.3.
- (2) The NMC may from time to time determine differential fees (including annual subscription fees), rights, privileges and obligations that attach to different classes of membership.
- (3) A person is eligible to be a member of the AGHS if the person has applied and been approved for membership of the AGHS in accordance with clause 2.2.
- (4) A person is taken to be a member of the AGHS if:
 - (a) the person was a member of the AGHS immediately before the registration of this constitution with NSW Fair Trading; or
 - (b) the person has applied for and been approved for membership in accordance with clause 2.2; or
 - (c) the person has been awarded an honorary membership by the NMC.
- (5) A person who is a member of the AGHS is automatically a member of the Branch of the AGHS in the state or region in which that person ordinarily resides.

2.2 Application for membership

- (1) An application by a person for membership of the AGHS:
 - (a) must be made in writing (including by email) or other electronic means (including via the AGHS website), in the form determined by the NMC, and
 - (b) must be lodged (including by electronic means), with the national executive officer, and
 - (c) must be accompanied by a payment equal to the annual subscription fee for the relevant class of membership.
- (2) As soon as practicable after receiving an application for membership, the national executive officer must either:
 - (a) determine to approve the application; or
 - (b) if the national executive officer considers that the application should be rejected, refer the application to the NMC (or a person or sub-committee of the NMC appointed for such purpose) to determine whether to approve or to reject the application.
- (3) As soon as practicable after a determination is made to approve or reject the application, the national executive officer must:
 - (a) notify the applicant in writing (including by email) that the application has been approved or rejected (whichever is applicable), and
 - (b) if the application is rejected, refund to the applicant the full amount of any payment made for the annual subscription fee.
- (4) If the application is approved and payment of the annual subscription fee has been made, the national executive officer must enter or cause to be entered the applicant's name in the register of members, and on the name being so entered, the applicant becomes a member of the AGHS.

2.3 Honorary membership

- (1) The NMC may from time to time and in its absolute discretion award an honorary membership of the AGHS to a person that the NMC determines has made a significant contribution to the objects of the AGHS.
- (2) An honorary membership may be awarded for life, or for a period determined by the NMC.
- (3) During the period that a person holds an honorary membership, that person:
 - (a) is not obliged to pay an annual subscription fee (but may still choose to do so voluntarily), and

- (b) otherwise enjoys all of the same rights, privileges and obligations (including voting rights) of an individual member.

2.4 Cessation of membership

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

- (a) dies, or
- (b) resigns membership, or
- (c) is expelled from the AGHS, or
- (d) fails to pay the annual subscription fee within 3 months after the fee is due, or
- (e) in the case of an honorary member, does not apply to become a member under another class of membership after the period of honorary membership expires.

2.5 Membership entitlements not transferable

A right, privilege or obligation which a person has by reason of being a member of the AGHS:

- (a) is not capable of being transferred or transmitted to another person, and
- (b) terminates on cessation of the person's membership.

2.6 Resignation of membership

- (1) A member may resign from membership of the AGHS by first giving to the national executive officer written notice of at least 1 month (or any other period that the NMC may determine) of the member's intention to resign and, on the expiration of the period of notice, the member ceases to be a member.
- (2) If a member of the AGHS ceases to be a member under subclause (1), and in every other case where a member ceases to hold membership, the national executive officer must make an appropriate entry in the register of members recording the date on which the member ceased to be a member.

2.7 Register of members

- (1) The national executive officer must establish and maintain a register of members (whether in written or electronic form) specifying the name and postal, residential and/or email address of each person who is a member of the AGHS together with the date on which the person became a member.
- (2) The register of members must be kept at the main premises of the AGHS. If the main premises of the AGHS is not in New South Wales, an up to date copy of the register of members must also be readily accessible by electronic means at the premises of the public officer of the AGHS in that state.
- (3) The register of members must be open for inspection, free of charge, by any member of the AGHS during normal business hours and by prior appointment.
- (4) A member of the AGHS may obtain a copy of any part of the register upon payment of an administrative fee of not more than \$25, together with an additional amount of not more than \$2 per page for copying.
- (5) If a member requests that any information contained on the register about the member (other than the member's name) not be available for inspection, that information must not be made available for inspection.
- (6) A member must not use information about a person obtained from the register to contact or send material to the person, other than for:
 - (a) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the AGHS, or other material relating to the AGHS, or
 - (b) any other purpose necessary to comply with a requirement of the Act or the Regulation.

- (7) If the register of members is kept in electronic form:
 - (a) it must be convertible into hard copy, and
 - (b) the requirements in subclauses (2) and (3) apply as if a reference to the register of members is a reference to a current hard copy of the register of members.

2.8 Fees and subscriptions

- (1) Prior to the commencement of each financial year of the AGHS, the NMC must fix the annual subscription fee payable in that financial year for each of the relevant classes of membership.
- (2) Within each class of membership, the annual subscription fee determined by the NMC may:
 - (a) include incentives or provisions to facilitate the member paying an annual subscription fee for subsequent years in advance (e.g., as part of a 3-year membership payment), and/or
 - (b) include differential charges to reflect particular services provided by the AGHS to that member (e.g., a higher annual subscription fee or additional fee for a member electing to receive a newsletter, journal or other information in hard copy, rather than via electronic means).
- (3) A member of the AGHS must, on admission to membership, pay to the AGHS the annual subscription fee determined by the NMC for the relevant class of membership for that year (unless already paid).
- (4) In each financial year that the member remains a member of the AGHS, the member must pay to the AGHS the annual subscription fee determined by the NMC for the relevant class of membership for that year.
- (5) The annual subscription fee must be paid upon the member first becoming a member, and thereafter on each anniversary of the date that the member first became a member or on such other date set out in a membership renewal notice.

2.9 Members' liabilities

The liability of a member of the AGHS to contribute towards the payment of the debts and liabilities of the AGHS or the costs, charges and expenses of any winding up of the AGHS is limited to the amount (if any) unpaid by that member in respect of the member's annual subscription fee under clause 2.8 for the relevant financial year.

2.10 Resolution of disputes

- (1) If a dispute between a member and another member (in their capacity as members) of the AGHS, or a dispute between a member or members and the AGHS, cannot be promptly and satisfactorily resolved by the NMC, the dispute is to be referred to a Community Justice Centre for mediation under the *Community Justice Centres Act 1983* (NSW).
- (2) If a dispute is not resolved by mediation within 3 months of the referral to a Community Justice Centre, the dispute is to be referred to arbitration.
- (3) The *Commercial Arbitration Act 2010* (NSW) applies to a dispute referred to arbitration.

2.11 Disciplining of members

- (1) A complaint may be made to the NMC by any person that a member of the AGHS:
 - (a) has refused or neglected to comply with a provision or provisions of this constitution, or
 - (b) has wilfully acted in a manner prejudicial to the interests of the AGHS.
- (2) The NMC may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.

- (3) If the NMC decides to deal with the complaint, the NMC:
 - (a) must cause notice of the complaint to be served on the member concerned, and
 - (b) must give the member at least 14 days from the time the notice is served within which to make submissions to the NMC in connection with the complaint, and
 - (c) must take into consideration any submissions made by the member in connection with the complaint.
- (4) The NMC may, by resolution, expel the member from the AGHS or suspend the member from membership of the AGHS if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.
- (5) If the NMC expels or suspends a member, the secretary must, within 7 days after the action is taken, cause written notice to be given to the member of the action taken, of the reasons given by the NMC for having taken that action and of the member's right of appeal under clause 2.12.
- (6) The expulsion or suspension does not take effect:
 - (a) until the expiration of the period within which the member is entitled to appeal against the resolution concerned, or
 - (b) if within that period the member exercises the right of appeal, unless and until the AGHS confirms the resolution under clause 2.12, whichever is the later.

2.12 Right of appeal of disciplined member

- (1) A member may appeal to the AGHS in general meeting against a resolution of the NMC under clause 2.11, within 7 days after notice of the resolution is served on the member, by lodging with the national executive officer a notice to that effect.
- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) On receipt of a notice from a member under subclause (1), the national executive officer must notify the NMC, which is to convene a general meeting of the AGHS to be held within 28 days after the date on which the national executive officer received the notice.
- (4) At a general meeting of the AGHS convened under subclause (3):
 - (a) no business other than the question of the appeal is to be transacted, and
 - (b) the NMC and the member must be given the opportunity to state their respective cases orally or in writing, or both, and
 - (c) the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (5) The appeal is to be determined by a simple majority of votes cast by members of the AGHS.

Part 3: NATIONAL MANAGEMENT COMMITTEE

3.1 Powers of the NMC

Subject to the Act, the Regulation, this constitution and any resolution passed by the AGHS in general meeting, the NMC:

- (a) is to control and manage the affairs of the AGHS, and
- (b) may exercise all the functions that may be exercised by the AGHS, other than those functions that are required by this constitution to be exercised by a general meeting of members of the AGHS, and

- (c) has power to perform all the acts and do all things that appear to the NMC to be necessary or desirable for the proper management of the affairs of the AGHS.

3.2 Composition and membership of NMC

- (1) The NMC is to consist of:
 - (a) a minimum of 6 and a maximum of 8 members elected under clause 3.3, and
 - (b) 9 Branch representatives appointed under clause 3.4.
- (2) The maximum total number of members of the NMC is to be 17.
- (3) The NMC must elect from the membership of the NMC the following office bearers of the AGHS:
 - (a) a chairperson,
 - (b) a vice-chair,
 - (c) a treasurer,
 - (d) a secretary, and
 - (e) subject to clause 4.3, a public officer.
- (4) Instead of a chairperson and vice-chair, the NMC may elect two of its members to jointly hold the office of co-chairs of the AGHS on such terms as the NMC may determine.
- (5) The election of the office bearers must take place as soon as reasonably practicable after each annual general meeting of the AGHS, or as soon as reasonably practicable after a casual vacancy occurs in any office.
- (6) A member of the NMC may hold up to 2 offices (other than both the offices of chairperson and vice-chair).
- (7) A member of the NMC shall, subject to this constitution, hold office for a period of three years, but shall be eligible for re-election (in the case of an elected member) or reappointment (in the case of a state or regional Branch representative) for one additional term of three years (i.e., a maximum of 6 years overall).
- (8) An elected member who is elected to the NMC under clause 3.3 and a Branch representative who is appointed to the NMC under clause 3.4:
 - (a) are of equal status as members of the NMC and have equal voting rights; and
 - (b) must act in the wider interests of the AGHS and the NMC as a whole, and be prepared to assist with the management of the AGHS nationally, rather than acting in the interests of a particular state or region.

3.3 Election of NMC members

- (1) Nominations of candidates for election as an elected member of the NMC:
 - (a) must be made in writing, signed by 2 members of the AGHS and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination), and
 - (b) must be delivered to the national executive officer at least 7 days before the date fixed for the holding of the annual general meeting at which the election is to take place.
- (2) If insufficient nominations are received to fill all vacancies on the NMC, the candidates nominated are taken to be elected and any vacant positions remaining on the NMC are taken to be casual vacancies.
- (3) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (4) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (5) The ballot for the election of members of the NMC is to be conducted at the annual general meeting in any usual and proper manner that the NMC directs.

- (6) A person nominated as a candidate for election as member of the NMC must be a member of the AGHS.

3.4 Appointment of Branch representatives to NMC

- (1) Each Branch established under Part 5 of this constitution is entitled to appoint a representative to be a member of the NMC.
- (2) The Branch committee for a state or region must appoint a member of the AGHS who is ordinarily resident in that state or region to be the representative of that Branch on the NMC.

3.5 Keeping of minutes

- (1) It is the duty of the secretary to keep minutes (whether in written or electronic form) of:
- (a) all appointments of office-bearers and members of the NMC, and
 - (b) the names of members of the committee present at a meeting of the NMC or a general meeting, and
 - (c) all proceedings at NMC meetings and general meetings.
- (2) The secretary may delegate any of the secretary's functions under subclause (1) to a person approved by the NMC for that purpose, including (but not limited to) the national executive officer.
- (3) Minutes of proceedings at a meeting of the NMC must be approved by the NMC at the next succeeding meeting (with or without amendment, if required), with a record of the approval to be confirmed either:
- (a) in the minutes of the next succeeding meeting, or
 - (b) by a copy the minutes being signed by the chairperson of the meeting.
- (4) The signature of the chairperson may be transmitted by electronic means for the purposes of subclause (3)(b).

3.6 Casual vacancies on NMC

- (1) In the event of a casual vacancy occurring in the membership of a member of the NMC elected under clause 3.3, the NMC may appoint a member of the AGHS to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.
- (2) In the event of a casual vacancy occurring in the membership of a member of the NMC appointed under clause 3.4, the Branch committee of the relevant Branch may appoint a member of the AGHS who is ordinarily resident in that state or region to fill the vacancy.
- (3) A casual vacancy in the office of a member of the NMC occurs if the member:
- (a) dies, or
 - (b) ceases to be a member of the AGHS,
 - (c) is or becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, or
 - (d) resigns office by notice in writing given to the secretary, or
 - (e) is removed from office under clause 3.8, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is absent without the consent of the NMC from 3 consecutive meetings of the NMC, or
 - (h) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months, or
 - (i) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the *Corporations Act 2001* of the Commonwealth.

3.7 Removal of NMC members

- (1) The AGHS in general meeting may by resolution remove any member of the NMC from office before the expiration of the member's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.
- (2) The relevant Branch committee of a state or region may at any time remove the member of the NMC appointed under clause 3.4 for that state or region, before the expiration of the member's term of office, and may appoint another person under clause 3.4 to hold that office.
- (3) If a member of the NMC to whom a proposed resolution referred to in subclause (1) relates makes representations in writing to the secretary or chairperson (not exceeding a reasonable length) and requests that the representations be notified to the members of the AGHS, the secretary or the chairperson may send a copy of the representations to each member of the AGHS or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

3.8 NMC meetings and quorum

- (1) The NMC must meet at least 4 times in each period of 12 months at the place and time that the NMC may determine.
- (2) Additional meetings of the NMC may be convened by the chairperson or by any member of the NMC.
- (3) Oral or written notice of a meeting of the NMC must be given by the secretary to each member of the NMC at least 3 business days (or any other period that may be unanimously agreed on by the members of the NMC) before the time appointed for the holding of the meeting.
- (4) Notice of a meeting given under subclause (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the NMC members present at the meeting unanimously agree to treat as urgent business.
- (5) Any 6 members of the NMC constitute a quorum for the transaction of the business of a meeting of the NMC, provided that the 6 members constituting the quorum comprise members of the NMC who ordinarily reside in at least 3 separate states or the ACT.
- (6) No business is to be transacted by the NMC unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to a place and time to be determined by the chairperson.
- (7) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (8) At a meeting of the NMC:
 - (a) the chairperson or, in the chairperson's absence, the vice-chair is to preside, or
 - (b) if there are co-chairs, one of the co-chairs is to preside by agreement or, if there is no agreement, by resolution of those members present at the meeting, or
 - (c) if the chairperson or the vice-chair (or the co-chairs) are absent or unwilling to act, one of the remaining members of the NMC chosen by the members present at the meeting is to preside.
- (9) The NMC may invite other members or people to attend and participate in a meeting of the NMC in a non-voting capacity, on such terms as the NMC thinks fit.

3.9 Appointment of additional members to constitute quorum

- (1) If at any time the number of NMC members is less than the number required to constitute a quorum for a NMC meeting, the existing NMC members may appoint

a sufficient number of members of the AGHS as temporary NMC members to enable the quorum to be constituted.

- (2) A member of the NMC so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment
- (3) This clause does not apply to the filling of a casual vacancy to which clause 3.6 applies.

3.10 Use of technology at NMC meetings

- (1) A meeting of the NMC may be held at 2 or more venues using any technology approved by the NMC. The technology may include, but is not limited to, the use of audio or video links or any other system of electronic communication that gives each of the NMC members a reasonable opportunity to participate.
- (2) A member of the NMC who participates in a meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

3.11 Delegation by NMC to sub-committee

- (1) The NMC may, by resolution, delegate to one or more sub-committees (consisting of any of the members of the NMC or the AGHS that the NMC thinks fit) the exercise of any of the functions of the NMC that are specified in the resolution, other than:
 - (a) this power of delegation, and
 - (b) a function which is a duty imposed on the NMC by the Act or by any other law.
- (2) For the avoidance of doubt, a state or regional Branch committee established under Part 5 of this constitution is a sub-committee covered by this clause.
- (3) A function the exercise of which has been delegated to a sub-committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- (4) A delegation under this clause may be made subject to any conditions or limitations as to the exercise of any function, or as to time or circumstances, that may be specified in the delegation resolution.
- (5) Despite any delegation under this clause, the NMC may continue to exercise any function delegated.
- (6) Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the NMC.
- (7) The NMC may at any time, by resolution, revoke wholly or in part any earlier delegation under this clause.
- (8) A sub-committee may meet and adjourn as it thinks proper and may (subject to the delegation resolution and this constitution) generally regulate its own procedures.

3.12 Voting and decisions

- (1) Questions arising at a meeting of the NMC or of any sub-committee appointed by the NMC are to be determined by a simple majority of the votes of members of the NMC or sub-committee present at the meeting.
- (2) Each member present at a meeting of the NMC or of any sub-committee appointed by the NMC (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- (3) For the purpose of this clause, the voting rights and entitlements of all members of the NMC are of equal status, irrespective of whether that member was elected or appointed to the NMC.

- (4) Subject to clause 3.8, the NMC may act despite any vacancy on the NMC.
- (5) Any act or thing done or suffered, or purporting to have been done or suffered, by the NMC or by a sub-committee appointed by the NMC, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the NMC or sub-committee.

Part 4: OTHER NATIONAL MANAGEMENT ROLES

4.1 Treasurer

- (1) The person appointed to the position of treasurer must be a member of the NMC.
- (2) If no member of the NMC is able or willing to fully undertake all of the duties and responsibilities of the treasurer, the NMC may appoint or employ another person to assist the treasurer on such terms and conditions as the NMC thinks proper.
- (3) It is the duty of the treasurer of the AGHS to ensure:
 - (a) that all money due to the AGHS is collected and received and that all payments authorised by the AGHS are made,
 - (b) that correct books and accounts are kept showing the financial affairs of the AGHS, including full details of all receipts and expenditure connected with the activities of the AGHS at a national level, and
 - (c) that they are familiar with relevant laws and tax office requirements (e.g., in relation to the preparation of business activity statements).
- (4) The treasurer may, with the approval of the NMC, keep the books and accounts of the AGHS in an electronic format using software commonly available for such task (e.g., QuickBooks, MYOB).

4.2 National Executive Officer

- (1) The NMC may appoint a person to be the national executive officer of the AGHS.
- (2) The person appointed to the role of national executive officer may be employed and remunerated by the AGHS on such terms and conditions as the NMC considers proper.
- (3) The role of the national executive officer is:
 - (a) to manage the day-to-day operations of the AGHS at a national level,
 - (b) to maintain the register of members, and to deal with membership applications, renewals and general membership enquiries,
 - (c) to support and assist the NMC and its office bearers in the exercise of all of their functions, including arrangements for meetings of the NMC and general meetings of the AGHS,
 - (d) to maintain the AGHS website and any relevant social media accounts, and
 - (e) to undertake other duties as directed by the NMC.

4.3 Public officer

- (1) The NMC must appoint a person to be the public officer of the AGHS for the purpose of compliance with the Act and Regulation. The person so appointed must be over 18 years of age and reside in New South Wales.
- (2) The person appointed to the position of public officer should be a member of the NMC. If no member of the NMC is able or willing to undertake the role, the NMC may appoint another member of the AGHS to undertake the role.
- (3) The NMC must fill any vacancy in the position of public officer within 28 days.
- (4) It is the duty of the public officer:
 - (a) to be the official point of contact for the AGHS under the Act and Regulation, and to maintain an official address in New South Wales for that purpose,

- (b) to be one of the authorised signatories of the AGHS,
- (c) to maintain custody of, or ready access to, documents in accordance with this constitution,
- (d) to maintain custody of the common seal of the AGHS (if any),
- (e) to notify NSW Fair Trading of any change in the appointment of the public officer or the official address of the AGHS within 28 days,
- (f) to comply with the other responsibilities of a public officer set out in the Act and Regulation, and
- (g) to arrange and maintain any necessary registration of the AGHS as an Australian Registered Body under Australian law.

4.4 Advisory Committees

- (1) In addition to the appointment and delegation to sub-committees under clause 3.12, the NMC may appoint one or more advisory committees to offer advice or make recommendations to it about the exercise of any of its functions (e.g., a finance or editorial advisory committee, or an advisory committee for a fund or bequest).
- (2) An advisory committee may consist of any members of the NMC or the AGHS that the NMC thinks fit and may include a person or persons who are not members of the AGHS.
- (3) An advisory committee does not hold any delegated authority from the NMC and must not hold itself out as having such authority.
- (4) The NMC is not bound by any advice or recommendation from an advisory committee and may continue to exercise its functions as it thinks fit and in a manner that is not in accordance (either wholly or in part) with the advice or recommendations.

4.5 Journal Editor

- (1) The NMC may appoint a person to be the editor of the AGHS journal.
- (2) The person appointed to the role of journal editor may be employed and remunerated by the AGHS on such terms and conditions as the NMC considers proper.
- (3) The role of the journal editor is:
 - (a) to plan, manage, edit and produce the AGHS journal,
 - (b) to chair the editorial advisory committee,
 - (c) to provide advice and recommendations to the NMC on AGHS publications, and
 - (d) to undertake other duties of a like nature as directed by the NMC.

4.6 Performance Reviews

- (1) Any person employed and remunerated by the AGHS must undertake an annual performance review.
- (2) The annual performance review is to be carried out by the NMC, or an NMC member or sub-committee appointed by the NMC for such purpose.

Part 5: STATE AND REGIONAL BRANCHES

5.1 Establishment of state and regional Branches

- (1) The following state or regional Branches of the AGHS are established:
 - (a) ACT Monaro Riverina,
 - (b) Northern NSW,

- (c) Queensland,
 - (d) South Australia,
 - (e) Southern Highlands,
 - (f) Sydney,
 - (g) Tasmania,
 - (h) Victoria,
 - (i) Western Australia.
- (2) The NMC may at any time formally establish a new state, territory or regional Branch on receipt of a written submission signed by at least 10 members ordinarily residing in that state, territory or region.
 - (3) Each Branch established under subclauses (1) or (2) shall be called “The Australian Garden History Society ... [*name of state or region*] ... Branch”.
 - (4) A member of the AGHS who is ordinarily resident in the relevant state or region is automatically a member of the Branch for that state or region but is welcome to participate in events and activities organised by other Branches.

5.2 Role of Branch

- (1) The role of a Branch is, subject to any contrary direction from the NMC:
 - (a) to further the mission and objects of the AGHS in the relevant state or region,
 - (b) to be responsible for organising and conducting a range of local events and activities in keeping with the objects of the AGHS, including (but not limited to) publications, working bees, talks, tours and other events,
 - (c) to maintain an active and positive advocacy role for the recognition and protection of historic and significant gardens, plants and cultural landscapes in the relevant state or region, and
 - (d) to undertake other tasks authorised from time to time by the NMC.
- (2) A Branch is bound by this constitution and any instrument of delegation under clause 3.11.
- (3) A Branch or a Branch committee must take care in any advocacy or public statement to be balanced and constructive, to avoid political bias, and to advocate positively in accordance with the mission and objects of the AGHS.
- (4) It is not the intention of the AGHS that a Branch will operate as a separate or independent body. To this end, the NMC may at any time:
 - (a) undertake a review of the operations or finances of a Branch,
 - (b) give a direction to a Branch in relation to its operations, finances and/or activities,
 - (c) make a grant or loan to a Branch to assist the Branch to undertake its role,
 - (d) make a grant or loan to a new Branch to assist with its establishment,
 - (e) after discussion with the Branch committee, require payment to the AGHS of funds considered surplus to the needs or operations of a Branch,
 - (f) dissolve a Branch and require the Branch to wind up its affairs and transfer all moneys and other property to the AGHS or to another Branch nominated by the NMC.

5.3 Branch committee - general

- (1) A Branch must establish a Branch committee consisting of a Branch chairperson, Branch secretary, Branch treasurer, and at least 3 other members, all of whom must ordinarily reside in the relevant state or region (i.e. a minimum of 6 committee members).
- (2) At the discretion of the Branch committee, the roles of the Branch chairperson, secretary and/or treasurer may be shared or combined, provided the Branch maintains a minimum of 6 committee members.

- (3) Subject to subclause (4) and this constitution, a member of a Branch committee shall hold office for a period of three years but shall be eligible for re-election for one additional term of three years (i.e., 6 years overall).
- (4) Despite subclause (3), a member of a Branch committee may be elected for a third term of three years (i.e., 9 years overall) if the Branch or the Branch committee resolves that it is necessary or desirable for the efficient and ongoing management of the Branch to do so – for example, to retain a member with a particular role or skill that may otherwise be lost from the Branch committee.
- (5) A Branch committee is a sub-committee of the NMC for the purpose of clause 3.11 of this constitution. The NMC may at any time delegate to a Branch committee any additional functions beyond those set out in this Part 5 of the constitution.
- (6) Subject to this constitution and any instrument of delegation under clause 3.11, a Branch committee may otherwise regulate its own procedures.

5.4 Branch committee - role and responsibilities

- (1) Subject to this constitution and any instrument of delegation under clause 3.11, a Branch committee must:
 - (a) hold at least 3 meetings of the Branch committee each year,
 - (b) convene an annual meeting of the members of the Branch (being the members of the AGHS who are ordinarily resident in the relevant state or region) at least one month prior to the annual general meeting of the AGHS,
 - (c) at the annual meeting of the Branch conduct an election for any vacant positions on the Branch committee, and approve an annual statement of the accounts of the Branch for the immediately preceding financial year,
 - (d) forward to the national executive officer copies of the minutes of all meetings of the Branch and the Branch committee, and
 - (e) meet the financial obligations of the Branch under clause 5.5.
- (2) The quorum for a meeting under sub-clause (1)(b) is 10 members of the Branch.
- (3) A Branch committee must also:
 - (a) coordinate the events and activities of the Branch,
 - (b) forward to the national executive officer and the editor of the AGHS journal on a regular basis copies of the Branch program of upcoming events and activities, and
 - (c) at the request of the national executive officer or the NMC, provide a periodic report to the NMC on the operations, finances and/or activities of the Branch.

5.5 Branch obligations - financial

- (1) Subject to this constitution and any instrument of delegation under clause 3.11, a Branch committee:
 - (a) must establish and maintain a bank account into which all funds will be paid without deduction.
 - (b) is authorised to collect and make payments from its bank account for the purpose of funding its Branch events, projects and activities,
 - (c) must keep a proper account of all receipts and disbursements.
 - (d) must at all times keep the Branch in a solvent financial position with its bank account having a positive balance,
 - (e) must inform the AGHS treasurer without delay if the Branch is in financial difficulty or is likely to become in financial difficulty.
- (2) Subject to this constitution and any instrument of delegation under clause 3.11, a Branch committee, through its Branch treasurer:
 - (a) must prepare an annual statement of the accounts of the Branch, in a form approved by the AGHS treasurer,

- (b) must present the annual statement of accounts to the annual meeting of the Branch, with a certification from the Branch treasurer that the annual statement of accounts represents a fair and correct statement of the financial position of the Branch for the relevant financial year.
 - (c) must submit the annual statement of accounts to the AGHS treasurer as soon as possible after the end of the financial year, or at such other time directed by the AGHS treasurer or the NMC, to enable the Branch accounts to be audited in conjunction with the audit of the national accounts of the AGHS.
- (3) Provided the annual statement of accounts for the Branch complies with subclause (2), a Branch is not required to have the annual statement of accounts for the Branch separately audited unless:
- (a) directed to do so by the AGHS treasurer or the NMC, or
 - (b) required to do so under a law of the relevant state in which the Branch operates.
- (4) A Branch may still choose to undertake a voluntary audit of its annual statement of accounts at its expense.

5.6 Branch obligations – AGHS Annual Conference

- (1) A Branch is expected to assist, on a rotational basis to be determined by the NMC, with the organisation and conducting (but not funding) of the AGHS Annual Conference.
- (2) A Branch must establish and maintain a separate sub-committee and a separate bank account and statement of accounts for any AGHS Annual Conference organised or hosted by that Branch, in accordance with any requirements or guidelines provided by the NMC.

Part 6: GENERAL MEETINGS

6.1 Annual general meetings - holding of

- (1) The AGHS must hold its first annual general meeting within 18 months after its registration under the Act.
- (2) The AGHS must hold its annual general meetings:
 - (a) within 6 months after the close of the AGHS's financial year, or
 - (b) within any later time that may be allowed or prescribed under section 37 (2)(b) of the Act.

6.2 Annual general meetings - calling of and business at

- (1) The annual general meeting of the AGHS, subject to the Act and to clause 6.1, to be convened on the date and at the place and time that the NMC thinks fit.
- (2) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
 - (a) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting,
 - (b) to receive from the NMC reports on the activities of the AGHS during the last preceding financial year,
 - (c) to elect members of the NMC,
 - (d) to receive and consider any financial statement or report required to be submitted to members under the Act.
- (3) An annual general meeting must be specified as that type of meeting in the notice convening it.

6.3 Special general meetings - calling of

- (1) The NMC may, whenever it thinks fit, convene a special general meeting of the association.
- (2) The NMC must, on the requisition of at least 5% of the total number of members of the AGHS, convene a special general meeting of the AGHS.
- (3) A requisition of members for a special general meeting:
 - (a) must be in writing, and
 - (b) must state the purpose or purposes of the meeting, and
 - (c) must be signed by all of the members making the requisition, and
 - (d) must be lodged with the national executive officer, and
 - (e) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.
- (4) If the NMC fails to convene a special general meeting to be held within 1 month after the date on which a requisition of members for the meeting is lodged with the national executive officer, any one or more of the members who made the requisition may convene a special general meeting to be held not later than 3 months after that date.
- (5) A special general meeting convened by a member or members as referred to in subclause (4) must be convened as nearly as is practicable in the same manner as general meetings are convened by the NMC.
- (6) For the purposes of subclause (3):
 - (a) a requisition may be in electronic form, and
 - (b) a signature may be transmitted, and a requisition may be lodged, by electronic means.

6.4 Notice

- (1) Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the AGHS, the national executive officer must, at least 14 days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (2) If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the AGHS, the national executive officer must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be given to each member specifying, in addition to the matter required under subclause (1), the intention to propose the resolution as a special resolution.
- (3) No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under clause 6.2.
- (4) A member desiring to bring any business before a general meeting may give notice in writing of that business to the national executive officer who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.

6.5 Quorum for general meetings

- (1) No item of business is to be transacted at a general meeting unless a quorum of members entitled under this constitution to vote is present during the time the meeting is considering that item.
- (2) 25 members present (being members entitled under this constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.

- (3) For the purpose of subclause (2), a household membership is deemed to consist of no more than 2 voting members, and a corporate or not-for-profit membership is deemed to consist of no more than 3 voting members.
- (4) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
 - (a) if convened on the requisition of members—is to be dissolved, and
 - (b) in any other case—is to stand adjourned to a time to be determined by the chairperson (unless another place is specified at the time of the 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.
- (5) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least 10) are to constitute a quorum.

6.6 Presiding member

- (1) The chairperson or, in the chairperson's absence, the vice-chair, is to preside as chairperson at each general meeting of the association.
- (2) If the chairperson and the vice-chair are absent or unwilling to act, the members present must elect one of their number to preside as chairperson at the meeting.

6.7 Adjournment

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (2) If a general meeting is adjourned for 14 days or more, the national executive officer must give written or oral notice of the adjourned meeting to each member of the AGHS stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (3) Except as provided in subclauses (1) and (2), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

6.8 Making of decisions

- (1) A question arising at a general meeting of the AGHS is to be determined by:
 - (a) a show of hands (and the inclusion of any proxy votes) or, if the meeting is one to which clause 6.13 applies, any appropriate corresponding method that the NMC may determine, or
 - (b) if a poll is demanded by the chairperson or at least 5 members present at the meeting, then by a formal counting of votes (including any proxy votes) in accordance with that poll.
- (2) If the question is to be determined by a show of hands, a declaration by the chairperson that a resolution has, on a show of hands, 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 AGHS, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (3) Subclause (2) applies to a method determined by the NMC under subclause (1)
 - (a) in the same way as it applies to a show of hands.
- (4) If the question is to be determined by a poll, the poll is to be conducted in accordance with the directions of the chairperson.

6.9 Ordinary resolutions and special resolutions

- (1) Except for a matter requiring a special resolution, a question arising at a general meeting of the AGHS is to be determined through an ordinary resolution and by a simple majority – i.e., the resolution is passed if it is supported by more than half of the votes cast by the members present or by valid proxy at the general meeting.
- (2) A special resolution is required:
 - (a) to change the name of the AGHS,
 - (b) to change this constitution, or any of the objects of the AGHS,
 - (c) to amalgamate with another registered organisation,
 - (d) to dissolve or voluntarily wind up the AGHS, or
 - (d) for any other matter that requires a special resolution under the Act or Regulation.
- (3) If the matter requires a special resolution, the resolution must be supported by at least three quarters of the votes cast by the members present at the general meeting or by valid proxy.
- (4) If It is not possible or practicable for the resolution to be passed in the manner specified in subclause (3), a special resolution may be passed in an alternative manner authorised by NSW Fair Trading in accordance with the Act.

6.10 Voting

- (1) On any question arising at a general meeting of the AGHS each member present at the general meeting and entitled to vote has one vote only, in addition to any valid proxy vote held by that member on behalf of another member.
- (2) For the purpose of subclause (1):
 - (a) the votes cast on behalf of a household membership, or by valid proxy, cannot exceed 2 votes in total, even if more than 2 members of the household are present at the meeting; and
 - (b) the votes cast on behalf of a corporate or not-for-profit membership, or by valid proxy, cannot exceed 3 votes in total, even if more than 3 representatives of the organisation are present at the meeting.
- (3) In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- (4) A member is not entitled to vote at any general meeting or by proxy unless all money due and payable by the member to the AGHS has been paid.
- (5) A member is not entitled to vote at any general meeting or by proxy if the member is under 18 years of age.

6.11 Proxy votes

- (1) A member of the AGHS is entitled to vote by proxy at a general meeting, provided that the member has delivered to the chairperson or the secretary, prior to commencement of the general meeting, a notice in writing signed by the member that appoints another specified member present at the general meeting, or the chairperson, to act as his or her proxy in voting on any resolution at that meeting.
- (2) The notice under subclause (1) must specify whether it is either:
 - (a) a general proxy that allows the member holding the proxy to vote as that member thinks fit; or
 - (b) a special proxy that requires the member holding the proxy to vote for, or to vote against, particular resolutions at the general meeting.
- (3) If the notice under subclause (1) does not specify whether it is a general proxy or a special proxy, it will be deemed to be a general proxy.
- (4) A member present at the general meeting, other than the chairperson, must not hold more than 5 proxy votes.

- (5) A member holding a proxy vote may not assign that proxy vote to another member.
- (6) Proxy voting must not be undertaken at or in respect of a general meeting otherwise than in accordance with this clause.

6.12 Postal or electronic ballots

- (1) The AGHS may hold a postal or electronic ballot (as the NMC determines) to determine any issue or proposal (other than an appeal on a disciplinary matter under clause 2.12).
- (2) A postal or electronic ballot is to be conducted in accordance with Schedule 3 of the Regulation.

6.13 Use of technology at general meetings

- (1) A general meeting may be held at 2 or more venues using any technology approved by the NMC. The technology may include, but is not limited to, the use of audio or video links or any other system of electronic communication that gives each of the members a reasonable opportunity to participate.
- (2) A member who participates in a general meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

Part 7: FUNDS, DONATIONS & BEQUESTS

7.1 Funds - source

- (1) The funds of the AGHS are to be derived from:
 - (a) the annual subscription fees paid by members,
 - (b) donations and bequests,
 - (c) the proceeds of activities, conferences, tours and other events conducted by or for the benefit of the AGHS, and
 - (d) any other source determined by the NMC as appropriate having regard to its mission and objects.
- (2) All money received by the AGHS must be deposited as soon as practicable and without deduction to the credit of the AGHS's bank or other authorised deposit-taking institution account.
- (3) The AGHS must, as soon as practicable after receiving any money, issue an appropriate receipt.
- (4) Subject to this constitution (including clause 5.2(4)), funds sourced by a Branch through fee-paying tours and events conducted by the Branch may be held and used by that Branch for its activities and projects.

7.2 Funds - management

- (1) Subject to any resolution passed by the AGHS in general meeting, the funds of the AGHS are to be used solely in pursuance of the mission and objects of the AGHS in the manner that the NMC determines.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed or authorised (including by electronic means) by 2 authorised signatories.

7.3 Funds – audit requirements

- (1) The accounts of the AGHS must be audited annually, as soon as practicable after the end of a financial year.
- (2) The NMC must, prior to the end of a financial year, appoint an independent auditor for the purpose of subclause (1).

- (3) If the accounts of the AGHS fall below the threshold for a mandatory audit under the Act or Regulation in any given financial year, or otherwise become exempt from a mandatory audit requirement under Australian or NSW law, the NMC may resolve to have the accounts of the AGHS for that year certified by an independent accountant in lieu of a formal audit.
- (4) The accounts of the AGHS, as audited under subclause (1) or certified under subclause (3), must be presented to the annual general meeting of the AGHS.

7.4 Donations and bequests

- (1) Donations and bequests received by the AGHS must be kept in a separate account or accounts, and invested in such manner as the NMC deems fit.
- (2) A donation or bequest may only be used and applied in accordance with any express restrictions on the donation or bequest by the donor or testator.
- (3) Without limiting subclause (2), the AGHS may from time to time seek out and apply donations for a particular project or activity (e.g., the Nina Crone Writing Fund to support emerging writers on topics relevant to the AGHS). In such event, the donations must only be used and applied for that project or activity.
- (4) If there is no restriction placed on a donation or bequest, the donation or bequest may be applied to the general funds of the AGHS and may be used or applied to further the mission and objects of the AGHS in any manner the NMC deems fit.

7.5 Special provisions – Kindred Spirits Fund

- (1) Without limiting clause 7.4, the AGHS must continue to maintain and administer a separate fund known as the Kindred Spirits Fund.
- (2) For the purpose of this clause, the NMC must appoint an advisory committee under clause 4.4 to assist with the administration of the Kindred Spirits Fund. The advisory committee:
 - (a) is to be known as the Kindred Spirits Fund Advisory Committee,
 - (b) must comprise a minimum of 3 members, the majority of whom (in the opinion of the NMC) have an underlying community responsibility through tenure in public office or other professional standing,
 - (c) must be appointed by the NMC for a term of not less than one year, and are eligible for reappointment,
 - (d) may provide advice and recommendations to the NMC on all aspects of the management and application of the Kindred Spirits Fund, and
 - (e) may propose from time to time projects or activities that it considers worthy of support through a grant or distribution from the Kindred Spirits Fund.
- (3) In addition to the members appointed under subclause (2), the Treasurer is a standing ex-officio member of the Kindred Spirits Fund Advisory Committee.
- (4) The Kindred Spirit Fund must be kept and administered as a separate account and invested in such manner as the NMC sees fit, having regard to any advice or recommendations of the Kindred Spirits Fund Advisory Committee and/or any guidelines for public funds specified by the Australian Taxation Office.
- (5) Any royalties or proceeds from the sale of the book 'Kindred Spirits: A Botanical Correspondence' (1999) received by the AGHS must be applied to the Kindred Spirits Fund.
- (6) The object of the Kindred Spirits Fund is that grants or distributions from the fund can be made to foster education, and for the scientific, literary and/or artistic aspects of the AGHS mission and objects, particularly where the grant or distribution may benefit the wider Australian community.
- (7) It is the intention of the Kindred Spirits Fund that the capital base of the fund be preserved insofar as is possible. To this end:

- (a) grants and distributions from the Kindred Spirits Fund are to be made whenever possible from income generated by the fund, whether from interest, return on investment, or commercial activities.
 - (b) during periods when little or no income is generated by the Kindred Spirits Fund, a portion of the capital of the fund may be used and applied to one or more projects or activities that meet the criteria under subclause (6), provided that no more than 10% of the capital base of the Kindred Spirits Fund can be used or applied in this way in any financial year, and
 - (c) the AGHS may from time to time seek out and apply other donations or bequests to the Kindred Spirits Fund in order to maintain or supplement the capital base of the fund.
- (8) The NMC must consult with the Kindred Spirits Fund Advisory Committee, and must have regard to any advice or recommendation from the Kindred Spirits Fund Advisory Committee, before making any grant or distribution from the Kindred Spirits Fund.
 - (9) Unless otherwise required by law, the Kindred Spirits Fund may only be wound up or dissolved by a resolution passed at an Annual General Meeting or a Special General Meeting.
 - (10) If upon the winding up or dissolution of the Kindred Spirits Fund, there is after satisfaction of all its debts and liabilities any remaining property or funds, the Kindred Spirits Fund Advisory Committee must provide advice and recommendations to the NMC about whether the remaining funds may be wholly or partly transferred to the general funds of the AGHS (with or without restrictions on their use), or given or transferred to some other nominated fund, authority or institution having objects similar to the objects of the Kindred Spirits Fund, and whose rules or constitution prohibit the distribution of the funds or income among its members.

Part 8: MISCELLANEOUS

8.1 Avoidance of Conflict of Interest

- (1) A member of the NMC or a Branch committee must conduct that member's affairs so as to avoid any actual or potential conflict of interest with the interests of the AGHS.
- (2) Without limiting subclause (1), a member of the NMC or a Branch committee:
 - (a) must not be paid or remunerated (other than the reimbursement of reasonable out-of-pocket expenses) for any service provided to the AGHS that arises, directly or indirectly, from that committee member's position.
 - (b) must not have any interest, directly or indirectly, in any contract or proposed contract with the AGHS.
 - (c) must not be appointed to any remunerated position within the AGHS (e.g. as national executive officer) without first resigning that committee member's position.
- (3) Despite subclauses (1) and (2):
 - (a) a member of the NMC or a Branch committee may act without reward, as an agent or other authorised representative of any provider of services to the AGHS.
 - (b) if a member of the NMC or a Branch committee becomes aware of any actual or potential conflict of interest, that committee member must give prompt written notice to the NMC chairperson and the AGHS secretary, including full details of the nature and reason for the actual or potential conflict, and must comply with any direction of the NMC chairperson or the AGHS secretary to avoid or mitigate the conflict.
 - (c) the AGHS may transact business with any member provided that the terms of those transactions are no less favourable than those the AGHS could obtain

from unrelated third parties, and that this is transparently verified (e.g. through obtaining multiple quotations, or by open-market tender).

8.2 Insurance

- (1) The AGHS must arrange and maintain any insurance required under the Act and Regulation.
- (2) The AGHS may arrange and maintain such other insurance as it deems appropriate.

8.3 Distribution of property on winding up of AGHS

- (1) Subject to the Act and the Regulation, in a winding up of the AGHS, any surplus property of the AGHS is to be transferred to another organisation with similar objects and which is not carried on for the profit or gain of its individual members.
- (2) In this clause, a reference to surplus property is a reference to that property of the AGHS remaining after satisfaction of the debts and liabilities of the AGHS and the costs, charges and expenses of the winding up of the AGHS.

8.4 Change of name, objects and constitution

An application for registration of a change in the AGHS's name, objects or constitution in accordance with section 10 of the Act is to be made to NSW Fair Trading by the public officer or a member of the NMC as soon as practicable following a special resolution at a general meeting that approves the relevant change.

8.5 Custody of books etc

- (1) Except as otherwise provided by this constitution, all current records, books and official documents relating to the AGHS must be kept or be readily accessible by electronic means at the main premises of the AGHS.
- (2) If the main premises of the AGHS is not in New South Wales, a copy of the current records, books and official documents must also be readily accessible by electronic means at the premises of the public officer of the AGHS in that state.
- (3) Historical or archived records, books and other documents relating to the AGHS may be stored or kept at such locations as may be approved by the NMC from time to time, and from where they can be readily retrieved.

8.6 Inspection of books etc

- (1) The following documents must be open to inspection, free of charge, by a member of the AGHS during normal business hours and by prior appointment:
 - (a) records, books and other financial documents of the AGHS,
 - (b) this constitution,
 - (c) minutes of all NMC meetings and general meetings of the AGHS.
- (2) A member of the AGHS may obtain a copy of any part of the records referred to in subclause (1) upon payment of an administrative fee of not more than \$25, together with an additional amount of not more than \$2 per page for copying.
- (3) Despite subclauses (1) and (2), the NMC may refuse to permit a member of the AGHS to inspect or obtain a copy of records of the AGHS that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the AGHS.

8.7 Service of notices

- (1) For the purpose of this constitution, a notice may be served on or given to a person:
 - (a) by delivering it to the person personally, or
 - (b) by sending it by pre-paid post to the address of the person, or

- (c) by sending it by email or facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- (2) For the purpose of this constitution, a notice is taken, unless the contrary is proved, to have been given or served:
 - (a) in the case of a notice given or served personally, on the date on which it is given or served, and
 - (b) in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post, and
 - (c) in the case of a notice sent by email or facsimile transmission or some other form of electronic transmission, on the date it was sent or, if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.

8.8 Use of technology

In addition to the use of technology authorised under specific provisions of this constitution, the AGHS may use technology to the maximum extent possible in all of its communications, meetings, activities and events, including (but not limited to):

- (a) the posting of information on a website or via social media,
- (b) the use of email as a preferred means of communication,
- (c) the use of audio and video links,
- (d) the use of digital or electronic storage and software for the upkeep and holding of records and documents,
- (e) the use of online forms, and
- (f) the use of electronic banking and financial services.

8.9 Financial year

The financial year of the AGHS is:

- (a) the period of time commencing on the date of incorporation of the AGHS and ending on the following 30 June, and
- (b) each period of 12 months after the expiration of the previous financial year of the AGHS, commencing on 1 July and ending on the following 30 June.

8.10 Interpretation

- (1) For the purpose of the Regulation and Schedule 1 of the Act:
 - (a) the AGHS has adopted its own constitution, incorporating some provisions from the Model Constitution under the Regulation and other provisions modified from the Model Constitution.
 - (b) if this constitution has failed to address a matter outlined in Schedule 1 of the Act, the Model Constitution applies for that matter and for that purpose is deemed to form part of this constitution.
- (2) In this constitution:
 - (a) a reference to a function includes a reference to a power, authority and duty, and
 - (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.
- (3) The provisions of the *Interpretation Act 1987* (NSW) apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act.

8.11 Transitional

- (1) A person who is a member of the AGHS, or a member of the NMC or a Branch committee, or who is appointed or employed in a national management role, immediately prior to the date of approval of this constitution continues to hold such membership or role unless or until varied or revoked under this constitution.
- (2) All things done by the AGHS, the NMC and/or a Branch prior to the date of approval of this constitution continue to have effect unless or until varied or revoked under this constitution.

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