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SWAN AND CANNING RIVERS MANAGEMENT ACT 2006

**SWAN AND CANNING RIVERS
FOUNDATION RULES 2009**

Swan and Canning Rivers Management Act 2006

Swan and Canning Rivers Foundation Rules 2009

Made by the Minister, on the recommendation of the Trust, under section 132 of the Act.

1. Citation

These rules are the *Swan and Canning Rivers Foundation Rules 2009*.

2. Commencement

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day after that day.

3. Terms used

In these rules —

board means the board of management referred to in section 18 of the Act;

Council means the Council of the Foundation referred to in rule 9;

officer of the Foundation means —

- (a) the Executive Officer of the Foundation; or

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- (b) a person employed by the Council.

4. Membership of the Foundation

- (1) A person (whether an individual, a body corporate or an unincorporated body) becomes a member of the Foundation if —
 - (a) the person meets the membership criteria for a category of membership; and
 - (b) the person's application for membership is accepted by the Council.
- (2) There are 4 categories of membership.
- (3) The criteria for membership of a particular category are as follows —
 - (a) for membership as a Protector — the person has made a gift or gifts to the Trust or the Foundation in a 1 year period of between \$100 and \$4 999;
 - (b) for membership as an Advocate — the person has made a gift or gifts to the Trust or the Foundation in a 5 year period of between \$5 000 and \$24 999;
 - (c) for membership as a Defender — the person has made a gift or gifts to the Trust or the Foundation in a 5 year period of between \$25 000 and \$49 999;
 - (d) for membership as a Champion — the person has made a gift or gifts to the Trust or the Foundation in a 5 year period exceeding \$50 000.
- (4) A person's category of membership is to be determined by the Council from time to time in accordance with subrule (3).
- (5) Despite subrule (4), the Council may grant membership of any category to a person not otherwise qualified for that category of membership if the Council considers it appropriate because of the person's services to the Trust or the Foundation or

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contributions to the Swan or Canning Rivers or the environment generally.

- (6) The person's membership continues for the period referred to in subrule (3) in relation to the person's category of membership.

5. Gifts

- (1) A gift may be in cash or kind and the value of a gift in kind must be determined by the board or the Council.
- (2) If a person undertakes to make a gift or a series of gifts to the Trust or the Foundation over a period not exceeding 5 years, the person is to be taken to have made that gift or those gifts at the time that the undertaking is accepted by the board or the Council.
- (3) If an undertaking as to the making of a gift is not complied with within 1 month of the Foundation giving notice to the person that the gift is due, subrule (2) ceases to apply to the person (at the end of the month) unless the Council decides otherwise.
- (4) If subrule (2) ceases to apply to a person because of subrule (3), the person's membership is to be determined according to what gifts the person has made.
- (5) If a person undertakes to make a testamentary bequest to the Trust or the Foundation of a specified amount, the person is to be taken to have made a gift, equal to one half of that amount, at the time that the undertaking is accepted by the board or the Council.

6. Resignation of membership

A member may by notice in writing given to the Council resign from membership of the Foundation.

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7. Patrons

The Council may appoint one or more suitable persons to be the patron or patrons of the Foundation.

8. Friends of the Foundation

The Council may by resolution establish a public register of Friends of the Foundation and determine the qualifications for admission of persons, other than members, as Friends of the Foundation.

9. Council

- (1) The Council of the Foundation consists of —
 - (a) the Chairman of the board; and
 - (b) the General Manager of the Trust; and
 - (c) 3 to 5 other persons appointed by the board.
- (2) The Council, in the name of the Foundation, is to perform the functions of the Foundation.
- (3) The Council must not perform its functions in a way that is contrary to any requirements of the Trust.
- (4) A person appointed to the Council —
 - (a) is appointed for a term of 3 years; and
 - (b) may be reappointed, but cannot hold office for more than 6 consecutive years.
- (5) Despite subrule (4), a person appointed to the initial Council may be appointed for a term of between 1 and 3 years.

10. Vacation of office of Council member

The office of a member appointed to the Council becomes vacant if —

- (a) the member resigns by written notice given to the Council; or

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- (b) the member is absent, without leave of the Council, from 3 consecutive meetings of the Council of which he or she had notice; or
- (c) the member is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; or
- (d) the member becomes of unsound mind; or
- (e) the member is sentenced to a term of imprisonment.

11. Council procedure

- (1) The procedure for the calling, adjournment and regulation of meetings of the Council and the conduct of business at those meetings is, subject to these rules, as determined by the Council.
- (2) Unless the Council otherwise resolves, 3 members of the Council form a quorum.
- (3) Each member attending a meeting of the Council has a deliberative vote and, in the case of an equality of votes, the member presiding also has a casting vote.
- (4) The Executive Officer of the Foundation (if there is one) may attend and participate in meetings of the Council but may not vote.
- (5) The Council must keep accurate minutes of each meeting of the Council and give copies to the board.
- (6) Meetings of the Council may be held via telephone or other means, and resolutions may be passed by the Council, in accordance with Schedule 6 clauses 9 and 10 of the Act (modified as necessary) and any procedure determined by the Council.

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12. Powers of the Council

- (1) The Council may do all things necessary or convenient to be done for or in connection with the performance by the Foundation of its functions.
- (2) The Council may employ persons, appoint agents and obtain professional or other services.

13. Committees of the Council

- (1) The Council may appoint committees made up of the persons it thinks appropriate.
- (2) Each committee is responsible to and must report to the Council concerning the matters for which the committee is constituted.
- (3) The Council may discharge or alter the composition of a committee.
- (4) Subject to the directions of the Council, a committee may determine its own procedure.

14. General meetings of Foundation

- (1) An annual general meeting of members of the Foundation must be held as soon as practicable after the end of each financial year at a time and place determined by the Council.
- (2) The Council must submit to the annual general meeting an annual report on the operations of the Foundation during the preceding financial year, including a statement of financial transactions for the financial year and a statement of the financial position of the Foundation at the end of the financial year.
- (3) The Council must give at least 7 days' notice of every general meeting of the Foundation, including notice of the business of the meeting, to each member.

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- (4) The accidental omission to give notice of a meeting to a member does not invalidate the proceedings at the meeting.
- (5) At a general meeting a member of the Council must preside.
- (6) The member presiding must ensure that accurate minutes of each general meeting of the Foundation are kept and a copy sent to the board.
- (7) Special general meetings of the Foundation may be called by the Council and held at the times and places determined by it.

15. Quorum of meeting of Foundation

Fifty members or 10% of the members of the Foundation, whichever is the less, present in person or by proxy constitute a quorum for a general meeting, but a quorum must include 2 members of the Council of whom one must be the General Manager of the Trust or a member appointed under rule 9(1)(c).

16. Voting at general meetings

At a general meeting —

- (a) upon a show of hands — each member present in person has 1 vote; and
- (b) upon a poll — each member present in person or by proxy has 1 vote; and
- (c) in the event of an equality of votes — the person presiding at the meeting has a casting vote as well as a deliberative vote; and
- (d) the person presiding or any 3 members may demand a poll either before or on the declaration of the result of a show of hands.

17. Voting by proxy or representative

- (1) A member that is a body corporate or unincorporate may, by notice in writing given to the Council, appoint a representative

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to represent and act for it at general meetings of the Foundation and for the purposes of rules 15 and 16 a represented body is to be taken to be present in person.

- (2) A member may in writing appoint a proxy to attend and vote at general meetings of the Foundation on behalf of the member.
- (3) The appointment of a proxy is for the period and upon the conditions determined by the appointer.

18. Financial provisions

- (1) The Council must keep, to the satisfaction of the accountable authority of the Trust, proper accounts and records of the transactions and affairs of the Foundation and must do all things necessary to ensure that all money received is properly brought to account, all payments are correctly made and properly authorised and adequate control is maintained over the incurring of liabilities.
- (2) The accounts and records of the Foundation must be available for inspection by members of the Council and members of the board during normal office hours.

19. By-laws

The Council may, with the approval of the Trust, make by-laws with respect to the operations and proceedings of the Foundation, the Council, committees of the Council and persons employed by the Foundation.

20. Execution of documents

- (1) The Foundation is to have a common seal.
- (2) A document is duly executed by the Foundation if —
 - (a) the common seal of the Foundation is affixed to it in accordance with subrules (3) and (4); or

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- (b) it is signed on behalf of the Foundation by a person or persons authorised to do so under subrule (5).
- (3) The common seal of the Foundation must not be affixed to any document except as authorised by the Foundation.
- (4) The common seal of the Foundation must be affixed to a document in the presence of 2 members of the Council, or a member of the Council and an officer of the Trust or Foundation authorised by the Foundation either generally or in any particular case to be so present, and each of them must sign the document to attest that the common seal was so affixed.
- (5) The Foundation may, by writing under its common seal, authorise a member or members of the Council or an officer or officers of the Trust or Foundation to sign documents on behalf of the Foundation, either generally or subject to such conditions or restrictions as are specified in the authorisation.
- (6) A document purporting to be executed in accordance with this rule is to be presumed to be duly executed until the contrary is shown.
- (7) A document executed by a person under this rule without the common seal of the Foundation is not to be regarded as a deed unless the person executes it as a deed and is authorised under subrule (5) to do so.
- (8) When a document is produced bearing a seal purporting to be the common seal of the Foundation, it is to be presumed that the seal is the common seal of the Foundation until the contrary is shown.

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Recommended by the Swan River Trust:

JIM FREEMANTLE.

Minister for Environment:

DONNA FARAGHER.

Date: 7/11/2009.