

South Australia

Public Corporations (International Koala Centre of Excellence) Regulations 2018

under the *Public Corporations Act 1993*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation

Part 2—Application of Act to Minister

- 4 Application of Act to Minister

Part 3—International Koala Centre of Excellence

Division 1—Establishment and constitution

- 5 Establishment of subsidiary (section 24)
- 6 Establishment of board
- 7 Composition of board
- 8 Conditions of membership
- 9 Vacancies or defects in appointment of directors
- 10 Remuneration
- 11 Proceedings
- 12 Staff of IKCE
- 13 Disclosure

Division 2—Functions and performance

- 14 Principal purpose and functions of IKCE
- 15 Charter
- 16 Performance statement
- 17 Subsidiary companies
- 18 Indirect or joint operations by IKCE

Division 3—Gift Fund and deductible gift recipient status

- 19 Establishment of International Koala Centre of Excellence Gift Fund and management committee
- 20 Requirements relating to Gift Fund
- 21 Winding up of Gift Fund etc
- 22 Other matters

Division 4—Financial and related matters

- 23 Internal audit
 - 24 Quarterly reports
-

25	Loans, etc require approval
26	Provision of information
27	Common seal and execution of documents
28	Annual report

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Public Corporations (International Koala Centre of Excellence) Regulations 2018*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Public Corporations Act 1993*;

board means the board of directors established as the governing body of IKCE under Part 3;

director means a person appointed or holding office as a member of the board under Part 3;

Gift Fund means the International Koala Centre of Excellence Gift Fund established under regulation 19;

Gift Fund management committee means the committee established under regulation 19(2);

International Koala Centre of Excellence or *IKCE* means the International Koala Centre of Excellence established under Part 3;

Minister means the Minister for Environment and Water;

responsible person—see regulation 7(2).

Part 2—Application of Act to Minister

4—Application of Act to Minister

The following provisions of the Act apply to the Minister:

- (a) Part 1 (*Preliminary*);
- (b) section 24 (*Formation of subsidiary by regulation*);
- (c) section 25 (*Dissolution of subsidiary established by regulation*);
- (d) the Schedule (*Provisions applicable to subsidiaries*).

Part 3—International Koala Centre of Excellence

Division 1—Establishment and constitution

5—Establishment of subsidiary (section 24)

- (1) The International Koala Centre of Excellence is established as a subsidiary of the Minister.
- (2) IKCE—
 - (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and
 - (c) is capable of suing and being sued in its corporate name.

6—Establishment of board

- (1) A board of directors is established as the governing body of IKCE.
- (2) Anything done by the board in the administration of IKCE's affairs is binding on IKCE.

7—Composition of board

- (1) The board will consist of not more than 7 directors appointed by the Minister of whom—
 - (a) 1 must be a person employed in the administrative unit of the Public Service responsible for assisting the Minister in the administration of the *National Parks and Wildlife Act 1972*; and
 - (b) the others must together have such environmental, research, commercial, corporate governance, financial or other qualifications or experience as are, in the Minister's opinion, necessary to enable the board to carry out its functions effectively.
- (2) In appointing persons to the board, the Minister must ensure that at least 3 directors are persons who have a degree of responsibility to the community as a whole (*responsible persons*), on the basis that they—
 - (a) are known to a broad section of the community because they perform a public function or they belong to a professional body that has a professional code of ethics and rules of conduct; or
 - (b) have received formal recognition from an Australian Government for their services to the community.
- (3) One director will be appointed by the Minister to chair meetings of the board.
- (4) The Minister may appoint a director to be the deputy of the director appointed to chair the board and the deputy may perform or exercise the functions and powers of that director in his or her absence.
- (5) On the office of a director becoming vacant, a person may be appointed in accordance with this regulation to the vacant office.

- (6) The Minister may appoint a suitable person to be deputy of a member of the board during any period of absence of the member (and any reference to a director in these regulations will be taken to include, unless the contrary intention appears, a reference to a deputy while acting as a member of the board).

8—Conditions of membership

- (1) A director will be appointed for a term, not exceeding 3 years, specified in the instrument of appointment.
- (2) A director is, at the expiration of a term of appointment, eligible for reappointment but not so as to hold office for consecutive terms that exceed 6 years in total.
- (3) The office of a director becomes vacant if the director—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (f) is removed from office by the Minister by written notice.

9—Vacancies or defects in appointment of directors

An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

10—Remuneration

A director is entitled to be paid from the funds of IKCE (other than the Gift Fund) such remuneration, allowances and expenses as may be determined by the Minister.

11—Proceedings

- (1) A quorum of the board consists of one half of the total number of its members (ignoring any fraction resulting from the division) plus 1, and must include the director appointed to chair the board or the director appointed as that director's deputy.
- (2) The director appointed to chair the board will preside at meetings of the board at which the director is present.
- (3) If the director appointed to chair the board is absent from a meeting of the board the director appointed as that director's deputy will preside.
- (4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.
- (5) Each director present at a meeting of the board has 1 vote on a question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.

- (6) A telephone or video conference between directors will, for the purposes of this regulation, be taken to be a meeting of the board at which the participating directors are present if—
 - (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and
 - (b) each participating director is capable of communicating with every other participating director during the conference.
- (7) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—
 - (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
 - (b) a majority of the directors express their concurrence in the proposed resolution by email, letter, fax or other written communication setting out the terms of the resolution.
- (8) The board must cause accurate minutes to be kept of its proceedings.
- (9) A person authorised in writing by the Minister may attend (but not participate in) a meeting of the board and may have access to papers provided to directors for the purpose of the meeting.
- (10) If the board considers that a matter dealt with at a meeting attended by a representative of the Minister should be treated as confidential, the board may advise the Minister of that opinion giving the reason for the opinion and the Minister may, subject to subregulation (11), act on that advice as the Minister thinks fit.
- (11) If the Minister is satisfied on the basis of the board's advice under subregulation (10) that IKCE owes a duty of confidence in respect of a matter, the Minister must ensure the observance of that duty in respect of the matter, but this subregulation does not prevent a disclosure as required in the proper performance of ministerial functions or duties.
- (12) Subject to these regulations, the board may determine its own procedures.

12—Staff of IKCE

- (1) IKCE may, with the Minister's approval, appoint staff to assist it in carrying out its responsibilities.
- (2) IKCE may by arrangement with the appropriate authority, make use of the services, facilities or staff of a government department, agency or instrumentality.

13—Disclosure

- (1) If IKCE discloses to the Minister under the Act or these regulations a matter in respect of which IKCE owes a duty of confidence, IKCE must give notice in writing of the disclosure to the person to whom the duty is owed.
- (2) A director of IKCE does not commit any breach of duty by reporting a matter relating to the affairs of IKCE to the Minister.

Division 2—Functions and performance

14—Principal purpose and functions of IKCE

- (1) IKCE is established as an environmental organisation with the principal purpose of carrying out and promoting research into, and providing information and education on, the biology, management and conservation of koalas and, in so doing, IKCE's functions include—
 - (a) to develop a reputation as a leader in conservation and management practices relating to koalas; and
 - (b) to promote innovative research into koalas and education programs about koalas; and
 - (c) to develop a plan relating to research into and management of koalas and to facilitate access to and assist with the raising of funds for such research through grants and other funding sources or programs; and
 - (d) to establish the Gift Fund and the Gift Fund management committee in accordance with Division 3; and
 - (e) to provide information on and promote the understanding of the relationship between koalas and the local, national and international community; and
 - (f) to provide national leadership in the development and implementation of strategies for the sustainable management of koalas and their habitat; and
 - (g) to promote collaboration between scientists undertaking research into koalas; and
 - (h) to encourage the formation and enhancement of connections between the community and groups that promote the welfare and interests of koalas (including groups involved in the management and conservation of koalas); and
 - (i) to establish, maintain and enhance long term relationships and relevant partnerships (based in nature and relevant disciplines) with persons and bodies that support research into koalas; and
 - (j) to acquire, develop, hold, enhance or dispose of intellectual property; and
 - (k) to carry out other functions conferred on IKCE by the Minister; and
 - (l) to perform or exercise incidental functions or powers.
- (2) IKCE must obtain the approval of the Minister before it makes a material change to its policy direction or budget.

15—Charter

- (1) The Minister must prepare a charter for IKCE.
- (2) The charter must address—
 - (a) the nature and scope of IKCE's operations;
 - (b) IKCE's obligations to report on its operations;
 - (c) the form and contents of IKCE's accounts and financial statements;

- (d) any accounting, internal auditing or financial systems or practices to be established or observed by IKCE;
 - (e) the acquisition or disposal of capital or assets.
- (3) The charter may deal with any other matter not specifically referred to in subregulation (2).
- (4) The charter must be reviewed by the Minister at the end of each financial year.
- (5) The Minister may amend the charter at any time.
- (6) The charter, or an amendment to the charter, comes into force and is binding on IKCE on a day specified in the charter or amendment (but without affecting any contractual obligations previously incurred by IKCE).
- (7) On the charter or an amendment to the charter coming into force, the Minister must, within 12 sitting days, have copies of the charter, or the charter in its amended form, laid before both Houses of Parliament.

16—Performance statement

- (1) The Minister must, when preparing the charter for IKCE, also prepare, after consultation with IKCE, a performance statement setting the various performance targets that IKCE is to pursue in the coming financial year or other period specified in the statement and dealing with such other matters as the Minister considers appropriate.
- (2) The Minister must, after consultation with IKCE, review the performance statement when reviewing IKCE's charter.
- (3) The Minister may, after consultation with IKCE, amend the performance statement at any time.

17—Subsidiary companies

- (1) IKCE must not, without the approval of the Minister—
 - (a) form a subsidiary company; or
 - (b) acquire, or enter into any arrangement under which it will at a future time or would on the happening of some contingency hold, relevant interests in shares in a company such that the company becomes a subsidiary of IKCE.
- (2) The Minister may, as a condition of approval under this section, or by direction, require IKCE to take steps to include in a subsidiary company's memorandum or articles of association such provisions as the Minister considers appropriate—
 - (a) imposing limitations on the nature or scope of the company's operations; or
 - (b) imposing other controls or practices,consistent with those applicable to IKCE.

18—Indirect or joint operations by IKCE

IKCE must not, without the approval of the Minister, establish a trust scheme or a partnership or other scheme or arrangement for sharing of profits or joint venture with another person or undertake any operations or transactions pursuant to such a scheme or arrangement.

Division 3—Gift Fund and deductible gift recipient status

19—Establishment of International Koala Centre of Excellence Gift Fund and management committee

- (1) IKCE must establish the International Koala Centre of Excellence Gift Fund into which gifts of money or property for the principal purpose of IKCE under regulation 14 are to be paid and credited.
- (2) IKCE must establish a committee of at least 3 directors, a majority of whom are responsible persons, to administer and manage the Gift Fund in accordance with these regulations and the rules set out in the charter.

20—Requirements relating to Gift Fund

- (1) Gift Fund assets will from time to time be applied by the Gift Fund management committee, in accordance with the rules of the Gift Fund prepared and maintained by the Gift Fund management committee, solely towards the principal purpose of IKCE under regulation 14.
- (2) Gift Fund assets must be used and applied solely towards that principal purpose and no portion may be distributed, paid or transferred directly or indirectly (whether by way of dividend, bonus, profit or otherwise) to a director of IKCE or to the Crown.
- (3) IKCE must ensure that no money or property that is not of a kind referred to in regulation 19(1) is paid or credited into the Gift Fund.
- (4) In this regulation—

Gift Fund assets means money and property from gifts paid and credited into the Gift Fund (including, any income earned on that money and property).

21—Winding up of Gift Fund etc

If—

- (a) IKCE ceases to be a deductible gift recipient under the *Income Tax Assessment Act 1997* of the Commonwealth; or
- (b) the Gift Fund is wound up; or
- (c) IKCE is dissolved,

the surplus assets of the Gift Fund must be transferred to a public fund listed on the Register of Environmental Organisations under the *Income Tax Assessment Act 1997* of the Commonwealth.

22—Other matters

IKCE must ensure that it complies with any requirements of the Commonwealth relating to IKCE's deductible gift recipient status and the administration of the Gift Fund, including—

- (a) Ministerial rules imposed to ensure that gifts made to the Gift Fund are used only for the principal purpose of IKCE under regulation 14; and

- (b) Ministerial rules or Departmental requirements relating to the provision of information or documents to a Commonwealth Minister or Government department, including in relation to—
 - (i) a change in IKCE's name or the name of the Gift Fund; and
 - (ii) a change in the membership of the Gift Fund management committee; and
 - (iii) if there has been any departure from the model rules for public funds set out in the Guidelines to the Register of Environmental Organisations under the *Income Tax Assessment Act 1997* of the Commonwealth; and
- (c) requirements relating to the provision of statistical information from time to time about gifts made to the Gift Fund, within 4 months after the end of the financial year to which the gifts relate; and
- (d) any other requirements relating to the Gift Fund or IKCE's deductible gift recipient status.

Division 4—Financial and related matters

23—Internal audit

IKCE must establish and maintain effective internal auditing of its operations.

24—Quarterly reports

IKCE must report to the Minister on IKCE's financial position on a quarterly basis.

25—Loans, etc require approval

- (1) IKCE must not lend or advance to any person any money, securities or property without the prior written approval of the Treasurer.
- (2) IKCE must not undertake commercial borrowings without the prior written approval of the Treasurer.

26—Provision of information

- (1) IKCE must, at the request in writing of the Minister, furnish the Minister with such information or records in the possession or control of IKCE as the Minister may require in such manner and form as the Minister may require.
- (2) If a record in the possession or control of IKCE is furnished to the Minister under this regulation, the Minister may make, retain and deal with copies of the record as the Minister thinks fit.
- (3) If the board considers that information or a record furnished under this regulation contains matters that should be treated as confidential, the board may advise the Minister of that opinion giving the reason for the opinion and the Minister may, subject to subregulation (4), act on that advice as the Minister thinks fit.

- (4) If the Minister is satisfied on the basis of the board's advice under subregulation (3) that IKCE owes a duty of confidence in respect of a matter, the Minister must ensure the observance of that duty in respect of the matter, but this subregulation does not prevent a disclosure as required in the proper performance of ministerial functions or duties.

27—Common seal and execution of documents

- (1) The common seal of IKCE must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of 2 directors.
- (2) The board may, by instrument under the common seal of IKCE, authorise a director, an employee of IKCE (whether nominated by name or by office or title) or any other person to execute documents on behalf of IKCE subject to limitations (if any) specified in the instrument of authority.
- (3) Without limiting subregulation (2), an authority may be given so as to authorise 2 or more persons to execute documents jointly on behalf of IKCE.
- (4) A document is duly executed by IKCE if—
 - (a) the common seal of IKCE is affixed to the document in accordance with this regulation; or
 - (b) the document is signed on behalf of IKCE by a person or persons in accordance with authority conferred under this regulation.

28—Annual report

- (1) IKCE must, within 3 months after the end of each financial year, deliver to the Minister a report on the operations of IKCE during that financial year.
- (2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receipt of the report.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 29 November 2018

No 234 of 2018

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