

**CANBERRA INTERNATIONAL  
MUSIC FESTIVAL LTD  
Constitution**

**Canberra  
International Music  
Festival Ltd**

**Ainslie Arts Centre  
Elouera Street  
Braddon ACT 2612**

**ABN: 46 381 984 616  
ACN: 699 924 768**

**Revised and effective from:  
8 May 2019**



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# CANBERRA INTERNATIONAL MUSIC FESTIVAL LTD

## CONSTITUTION

### PRELIMINARY

#### 1. Name of Company

The name of the company is Canberra International Music Festival Ltd.

#### 2. Type of Company

The Company is a not-for-profit public company limited by guarantee established to be, and continue as, a Registered Charity.

#### 3. Limited liability of Members

3.1 The liability of Members is limited.

3.2 The liability of a Member to contribute towards the payment of debts and liabilities of the Company or the costs, charges and expenses of the winding up of the Company will be limited to the amount, if any, unpaid by the Member in respect of membership of the Company as required by clause 4.

#### 4. Guarantee

Each Member must contribute an amount not more than ten dollars (\$10.00) to the property of the Company if the Company is wound up during the Member's membership, or within 12 months after they stop being a Member.

#### 5. Definitions

Definitions in this Constitution apply unless the context requires otherwise:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and any associated regulations.

**Board** means the board of Directors for the time being of the Company or those of them who are present at a meeting at which there is a quorum.

**Chair** means the person appointed as chair of the Company in accordance with clause 31.

**Committee** means a committee to which the Board has delegated powers under Clause 45.

**Company** means Canberra International Music Festival Ltd (ABN 46 381 984 616).

**Constitution** means this Constitution as amended from time to time.

**Corporations Act** means the *Corporations Act 2001* (Cth) and any associated regulations.

**Deputy Chair** means the person appointed as deputy chair of the Company in accordance with clause 31.

**Directors** means all or any number of directors for the time being of the Company acting in accordance with this Constitution.

**Guarantee** means the maximum amount each Member agrees to pay the Company in accordance with clause 4.

**ITAA** means the *Income Tax Assessment Act 1997* (Cth).

**Law** means the ACNC Act and the Corporations Act.

**Life Member** means a person who is a Member for life or for so long as the Company remains in existence.

**Member** means a member of the Company in accordance with this Constitution and the Law.

**Members present** means Members present at a general meeting of the Company in person or by duly appointed representative, proxy or attorney.

**Register** means the register of Members of the Company.

**Registered Address** means the address of which the Member notifies the Company as a place at which the Member is willing to accept service of notices.

**Registered Charity** means a charity registered as a charity under the ACNC Act.

**Register of Cultural Organisations** means the list of organisations and public funds established and maintained under Subdivision 30-F of the ITAA and administered for the time being by the Department of Communications and the Arts.

**Seal** means the common seal of the Company and includes any official seal of the Company (if any).

**Secretary** means the person appointed as secretary of the Company in accordance with clause 31.



**Special Resolution** means a resolution:

- (a) of which notice has been given as required by Law; and
- (b) that has been passed by at least 75% of the votes cast by Members present and entitled to vote on the resolution.

**Surplus Assets** means any assets of the Company that remain after paying all debts and other liabilities of the Company, including any costs of winding up the Company.

## **6. Interpretation of this Constitution**

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:

- (a) The singular includes the plural and conversely.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A gender includes all genders.
- (d) The word 'person' means an individual, and does not include a corporation, trust, partnership or unincorporated body.
- (e) The words 'including', 'for example', or similar expressions are not words of limitation and mean that there may be more inclusions or examples than those mentioned after that expression.
- (f) A reference to an act includes every amendment, re-enactment, or replacement of that act and any subordinate legislation made under that act (such as regulations).
- (g) A reference to dollars and \$ is to Australian currency.

## **7. Replaceable rules**

- 7.1 The replaceable rules set out in the Corporations Act do not apply to the Company.
- 7.2 While the Company is a Registered Charity, the Law overrides any clauses in this Constitution which are inconsistent with those Acts.
- 7.3 If the Company is not a Registered Charity, the Corporations Act overrides any clause in this Constitution which is inconsistent with that Act.

- 7.4 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this Constitution.

## **CHARITABLE PURPOSES**

### **8. Purpose of the Company**

- 8.1 The principal purpose of the Company is to promote music in the Australian Capital Territory and other parts of Australia by presenting the Canberra International Music Festival and related activities in support of the Festival such as fundraising and promotion activities.
- 8.2 The Company's activities will further its principal purpose of promoting music by:
- (a) presenting an innovative classical and contemporary art music program of the highest quality;
  - (b) creating tomorrow's repertoire by promoting excellence and innovation in new music;
  - (c) growing and informing the audience for classical and contemporary art music; and
  - (d) nurturing the development of talented young musicians.

### **9. Application of income and property**

- 9.1 The income and property of the Company, from wherever derived, must be applied solely towards promoting the Company and its purpose as provided for in this Constitution.
- 9.2 No part of the Company's income or assets may be paid or transferred directly or indirectly, by way of a dividend, bonus or otherwise, to Members of the Company.
- 9.3 Nothing in the above prevents:
- (a) the payment in good faith:
    - (i) of remuneration to any of the Company's employees or to any other person in return for any other services actually provided to the Company; or
    - (ii) for goods supplied to the Company in the ordinary course of business; or

- (b) the Company:
  - (i) repaying money borrowed from any Member of the Company; or
  - (ii) paying interest on money borrowed from any Member of the Company; or
  - (iii) reimbursing reasonable out-of-pocket expenses to any Director of the Company; or
  - (iv) paying reasonable and proper rent for premises demised or let from any Member of the Company.

9.4 The Company must not pay fees to its Directors.

9.5 The Company must make no payment to a Member (including a Director) for items referred to in clause 9.3 unless the payment is approved by Directors.

## **MEMBERS**

### **10. Members**

10.1 The Members of the Company are:

- (a) ordinary members;
- (b) Life Members;
- (c) any other person that the Directors allow to be a Member, in accordance with this Constitution.

10.2 Life membership may be conferred by the Board.

10.3 Any individual or natural adult person may be admitted to ordinary membership. The number of Members of the Company is unlimited.

### **11. Application for membership**

11.1 A person who supports the purpose of the Company is eligible to apply to be a Member under clause 11.2.

11.2 A person may apply to become a Member by writing to the Secretary stating they:

- (a) want to become a Member
- (b) support the purpose of the Company, and

- (c) agree to comply with this Constitution, including paying the entrance fee, annual subscription fee or other fees as may be required by the Board under clause 12.
- 11.3 Any application for membership must be made to the Secretary in writing in a form prescribed by the Board and must be signed by the applicant.
- 11.4 The Board retains the right to refuse any application for membership. In any case where an application for membership is refused, the Secretary must write to the applicant within a reasonable time to tell the applicant their application has been rejected. However, the Board will not be required to give any reason for its decision.
- 11.5 When an applicant has been admitted to ordinary membership, the Secretary must send to the applicant written notice of acceptance. Such notice must include a request for payment of such entrance fee, annual subscription fee or other fee as are then payable, provided that if payment is not made within two calendar months after the date of the notice, the Board may in its discretion terminate the membership.
- 11.6 An applicant will become a Member when they are entered on the Register.
- 11.7 For the avoidance of doubt, the Directors may approve an application even if the application does not state the matters listed in clauses 11.2(a), 11.2(b) or 11.2(c). In that case, by applying to be a Member, the applicant agrees to those three matters.

## **12. Fees**

Members must pay entrance, annual subscription or other fees as set by the Board from time to time.

## **13. Cessation of membership**

- 13.1 A Member may at any time, by giving notice in writing to the Secretary, resign as a Member of the Company. The resignation will be effective from the date of receipt of the notice by the Secretary. That Member's name will be removed from the Register. Notwithstanding such resignation the Member will continue to be liable for the Guarantee.
- 13.2 If a Member resigns as a Member pursuant to clause 13.1, and that Member is also a Director, they will be held to have automatically resigned as a Director and the same effective date of resignation as that referred to in clause 13.1 applies.

- 13.3 If any Member:
- (a) is in breach of the provisions of this Constitution; or
  - (b) is guilty of any act or omission which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the interests of the Company,
- the Board may expel the Member from the Company and remove the Member's name from the Register.
- 13.4 If an annual subscription of a Member remains unpaid for a period of four calendar months after it becomes due then the Member must after notice of default by the Secretary be debarred from all privileges of membership provided that the Board may reinstate such membership on payment of all arrears. If such arrears remain unpaid for twelve (12) months after the same became due, membership must be deemed to have been terminated.
- 13.5 A person immediately stops being a Member if they:
- (a) die;
  - (b) resign, by writing to the Secretary; or
  - (c) are expelled under clause 13.3.

## **REGISTER**

### **14. Register of Members**

- 14.1 The Company must establish and maintain the Register in accordance with the Corporations Act.
- 14.2 The Register must be kept by the Secretary and contain for each current Member:
- (a) name;
  - (b) Registered Address;
  - (c) dates the membership started; and
  - (d) any such other particulars as the Board prescribes.
- 14.3 For each person who ceased being a Member in the last seven years, the Register must contain:
- (a) the person's name;

- (b) the person's Registered Address;
- (c) dates the membership started and ended; and
- (d) any such other particulars as the Board prescribes.

14.4 The Company must give current Members access to the Register.

14.5 Information that is accessed from the Register must only be used in a manner relevant to the interests or rights of Members.

## **15. Address of Members**

Every Member must communicate any change in Registered Address to the Company in writing and any such change of Registered Address must be entered in the Register. The latest Registered Address is deemed to be the Member's Registered Address.

## **GENERAL MEETINGS**

### **16. Annual general meeting**

16.1 A general meeting, called the annual general meeting, must be held:

- (a) within 18 months after registration of the Company; and
- (b) once every financial year within five (5) months after the end of the Company's financial year.

16.2 The business of the annual general meeting may include the following, even if not referred to in the notice of the meeting:

- (a) a review of the Company's activities;
- (b) a review of the Company's finances;
- (c) any auditor's report;
- (d) the election of Directors; and
- (e) the appointment and payment of an auditor or auditors, if any.

16.3 Before or at the annual general meeting, the Directors must give information to the Members on the Company's activities and finances during the period since the last annual general meeting.

16.4 The chairperson of the annual general meeting must give Members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

## **17. General meetings**

17.1 A general meeting may be called:

- (a) by a majority decision of the Board; or
- (b) at the request of not less than four (4) Members.

17.2 When a general meeting is called pursuant to clause 17.1(b) the request must:

- (a) be in writing;
- (b) be signed by each Member making the request;
- (c) state any resolutions proposed for that meeting; and
- (d) be given to Members in accordance with the notice provisions of this Constitution.

## **18. Notice of general meeting**

18.1 A notice of a general meeting must specify the place and time of the meeting, the general nature of the business to be transacted at the meeting and any other matters required by the Law. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting.

18.2 At least 21 days' notice must be given of a general meeting at which:

- (a) any election of Directors or other officers is to be held;
- (b) a resolution will be moved to:
  - (i) remove an auditor;
  - (ii) remove a Director; or
  - (iii) appoint a Director in place of a Director removed.

18.3 21 days' notice must be given of any other general meeting, unless Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

18.4 The Company must give its auditor:

- (a) notice of a general meeting in the same way that a Member is entitled to receive notice; and
- (b) any other communication relating to the general meeting that a Member is entitled to receive.

18.5 The Company may give notice of a general meeting to a Member in any of the ways provided in this Constitution for the service of notices.

## **19. Quorum**

19.1 Ten (10) ordinary members of the Company constitute a quorum. A proxy must also be counted towards a quorum.

19.2 No business may be transacted at any meeting, except the election of a chairperson for that meeting and the adjournment of the meeting, unless a quorum is present at the commencement of the meeting.

## **20. Adjournment in absence of a quorum**

20.1 If no quorum is present at a general meeting within thirty (30) minutes after the time specified in the notice of meeting, the meeting is cancelled, unless the Board adjourns the meeting to a date, time and place determined by it.

20.2 If no quorum is present at any adjourned meeting within thirty (30) minutes after the time for the meeting, the meeting is cancelled.

## **21. Chair**

21.1 The Chair must chair general meetings.

21.2 If at any general meeting:

- (a) the Chair has not been elected as provided by clause 31;
  - (b) the Chair is not present at the specified time for the holding of the meeting;  
or
  - (c) the Chair is present but is unwilling or unable to chair the meeting,
- a Deputy Chair will chair the general meeting.

21.3 If at any general meeting:

- (a) neither the Chair nor a Deputy Chair has been elected as provided by clause 31;



- (b) neither the Chair nor a Deputy Chair are present at the specified time for the holding of the meeting; or
- (c) the Chair and a Deputy Chair are present but are unwilling or unable to chair the meeting,

then the Members present may choose another Director to chair the general meeting.

- 21.4 The chairperson of the meeting is responsible for the conduct of the general meeting, and for this purpose must give Members a reasonable opportunity at the meeting to ask questions and to make comments about the management of the Company (including to the auditor or auditors, if any).

## **22. General conduct of meeting**

- 22.1 The conduct of each general meeting and the procedures to be adopted at the meeting are as determined at, during or prior to the general meeting by the chairperson.
- 22.2 At any time the chairperson considers it necessary or desirable for the proper and orderly conduct of the meeting, the chairperson may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members present.
- 22.3 The chairperson may require the adoption of any procedures which are in the chairperson's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.
- 22.4 Any determination by the chairperson in relation to matters of procedure or any other matter arising directly or indirectly from the business is final. Any challenge to a right to vote (whether on a show of hands or on a poll) may only be made at the meeting and may be determined by the chairperson whose decision is final.
- 22.5 A Secretary who is not a Member must be entitled to be present and to speak at any general meeting. Any other person (whether a Member or not) requested by the Directors to attend any general meeting must be entitled to be present and, at the request of the chairperson, to speak at that general meeting.

## **23. Adjournment**

During the course of the meeting the chairperson may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting. If the chairperson exercises a right of adjournment of a meeting under this clause, the chairperson has the sole discretion to decide whether to seek the approval of the Members present to the adjournment and, unless the chairperson exercises that discretion, the Members present in respect of the adjournment may take no vote. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

## **24. Voting**

Each question submitted to a general meeting is to be decided in the first instance by a show of hands of the Members present and entitled to vote, unless a poll is demanded. In the case of an equality of votes, the chairperson has, both on a show of hands and at a poll, a casting vote in addition to the vote or votes to which the chairperson may be entitled as a Member or as a proxy or duly appointed representative of a Member. Unless a poll is demanded, a declaration by the chairperson that a resolution has been passed or lost is conclusive.

## **25. When a poll may be demanded**

A poll may be demanded by a Member in accordance with the Law (and not otherwise) or by the chairperson. Unless the chairperson otherwise determines, no poll may be demanded on the adjournment of a meeting. The demand for a poll may be withdrawn.

## **26. Taking a Poll**

- 26.1 If a poll is demanded as provided in clause 25, it is to be taken in the manner and at the time and place as the chairperson directs, and the result of the poll is the meeting's resolution of the motion on which the poll was demanded. Any challenge to the admission or rejection of a vote may only be made at the meeting and may be determined by the chairperson, whose decision is final.
- 26.2 A demand for a poll does not prevent the continuation of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

## **VOTES OF MEMBERS**

### **27. Voting rights**

Each Member has the right to one vote both on a show of hands and a poll. A Member may vote in person or by proxy.

### **28. Proxies**

28.1 A Member who is entitled to attend and cast a vote at a meeting of the Company may appoint a person as a proxy to attend and vote for the Member in accordance with the Law but not otherwise. A proxy appointed to attend and vote in accordance with the Law may exercise the rights of the Member on the basis of and subject to the restrictions provided in the Law but not otherwise.

28.2 A form of appointment of a proxy is valid if it is in accordance with the Law or in any form that the Board may prescribe or accept.

28.3 The Secretary must, if requested, send a valid form of proxy to a Member.

28.4 The Secretary on the authority of the Board may complete any appointment of a proxy under clause 28.2 that is incomplete insofar as the name of the proxy has been omitted by the insertion of the name of any Director as the person in whose favour the proxy is given.

### **29. Validity of vote**

29.1 The validity of any resolution is not affected by the failure of any proxy to vote in accordance with instructions (if any) of the appointing Member.

29.2 A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or mental incapacity of the appointing Member or revocation of the instrument of proxy, provided no notice in writing of the death, mental incapacity or revocation has been received at the Company's registered office before the meeting or any adjourned meeting.

29.3 A proxy is not revoked by the appointing Member attending and taking part in the meeting, unless the appointing Member actually votes at the meeting on the resolution for which the proxy is proposed to be used.

## **BOARD OF DIRECTORS AND OFFICE BEARERS**

### **30. Constitution of Board**

30.1 The Board must consist of no less than three (3) and no more than twelve (12) Directors.

30.2 The Board will be comprised of up to:

- (a) ten (10) Directors elected by Members; and
- (b) up to two (2) Directors elected by the Board in accordance with the skills and experience criteria as determined by the Board of the Directors from time to time.

30.3 The Company may from time to time by resolution passed at a general meeting increase the number of Directors.

30.4 The election of Directors pursuant to clause 30.2(a) will take place in the following manner:

- (a) any two Members of the Company must nominate any other Member to serve as a Director;
- (b) the nomination must be in writing and signed by the Member and the proposer and seconder and must be lodged with the Secretary at least 14 days before the annual general meeting at which the election is to take place;
- (c) a list of the candidates' names in alphabetical order with the proposers' and seconders' names must be posted in a conspicuous space in the registered office of the Company for at least seven (7) days immediately preceding the annual general meeting;
- (d) balloting lists must be prepared (if necessary) containing the names of the candidates only. The names must be in alphabetical order. Each Member present at the annual general meeting shall be entitled to vote for any number of such candidates not exceeding the number of vacancies; and
- (e) in the case there is not a sufficient number of candidates nominated, the Board may fill up the remaining vacancy or vacancies.

30.5 The election of Directors pursuant to clause 30.2(b) will take place in the manner determined by the Board from time to time.

30.6 Except as otherwise provided for in this Constitution, Directors must hold office until they retire pursuant to clause 32.

### **31. Office bearers**

The office bearers of the Company must consist of a Chair, 2 x Deputy Chairs, Secretary and Treasurer all of whom shall be appointed by the Board from amongst the members of the Board.

### **32. Term of appointment and rotation of Directors**

32.1 Subject to clause 35, each Director is appointed on the basis that the termination date of each Director's appointment is at the annual general meeting of the Company immediately following the third anniversary of their appointment.

32.2 Subject to clause 30 and 32.3, at the completion of a Director's term a Director may stand for re-election.

32.3 No Director may remain a Director for more than six (6) years or two terms, whichever is the longer.

32.4 Nothing in clause 32.3 precludes any person from being appointed as a Director if the Members, by ordinary resolution, resolve that clause 32.3 does not apply to a particular person and that that person be reappointed as a Director for a further term.

### **33. Filling casual vacancies**

Subject to clauses 30 and 32, the Board may appoint a Member to be a Director or a person to be a Director, subject to them becoming a Member, at any time when a casual vacancy has occurred in the Board.

### **34. Remuneration of Directors**

No Director may be appointed to any salaried office of the Company or any office of the Company paid by fees. Nothing in this clause prohibits the payment by the Company to a Director of out-of-pocket expenses incurred by a Director in the performance of any duty as a Director where the amount payable does not exceed an amount approved by the Board.

## **TERMINATION OF OFFICE OF DIRECTOR**

### **35. Termination of office of Directors**

35.1 The office of a Director is terminated:

- (a) on the Director being absent from three (3) consecutive meetings of the Board without leave of absence from the Board where the Board has not, within 14 days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
- (b) on the Director resigning office by notice in writing to the Company;
- (c) on the Director ceasing to be a Member of the Company;
- (d) on the Director being prohibited from being a Director or removed from office by reason of the operation of the Law;
- (e) or on the retirement of that Director under clause 32.

## **POWERS AND DUTIES OF THE BOARD**

### **36. General powers of the Board**

- 36.1 The Company must be managed by or under the direction of and controlled by the Board.
- 36.2 The Board has and may exercise any of the functions conferred or imposed on it by or under the Constitution.
- 36.3 Without prejudice to and without limiting the powers conferred by the Constitution, the Board has the power to do any of the following:
  - (a) open and maintain a bank account or bank accounts to be operated by such person or persons whether Directors or not as the Directors from time to time determine;
  - (b) appoint any staff as may be necessary;
  - (c) employ and superannuate officers and employees;
  - (d) review staff positions;
  - (e) publish and distribute information concerning this Constitution and the regulations to Members and other interested persons;
  - (f) do all such things that are in the opinion of the Board incidental to or conducive to the attainment of the purpose of the Company;
  - (g) do all such things necessary to give effect to the powers contained in this Constitution;

(h) do all things as may be permitted by Law.

### **37. Power to borrow, guarantee and give security**

Without limiting the generality of clause 36, the Board may from time to time, on behalf of the Company, borrow such amounts as it considers necessary for the purpose of the Company at such rate of interest and upon such terms as it considers proper and may execute mortgages, loan agreements or other securities in respect of such moneys and charge any property of the Company and may execute, create and issue such mortgages, loan agreements or securities as it considers appropriate.

### **38. Power to Appoint patrons, friends and supporters**

The Board may from time to time appoint any person as a patron, friend or supporter (or such description as the Board determines) of the Company on such terms as the Board sees fit and any such category of persons may (but not need be) Members of the Company. The Board may make by-laws that prescribe, vary or cancel the qualifications, rights, privileges and obligations of any category of persons appointed.

### **39. Minutes**

The Board must cause minutes to be made of all:

- (a) appointments of office; and
- (b) names of the Directors present at all meetings of the Company and of the Board; and
- (c) proceedings at all meetings of the Company and of the Board. Such minutes must be signed by the chairperson of the meeting at which the proceedings were held or by the chairperson of the next succeeding meeting.

## **PROCEEDINGS OF DIRECTORS**

### **40. Procedures relating to Directors' meetings**

The Board may meet together, adjourn and otherwise regulate its meetings as it thinks fit. The Board may at any time, and the Secretary must, on the request of any two (2) Directors, convene a meeting of the Board. Notice of a meeting of the Board may be given by mail (electronic or otherwise), personal delivery, facsimile transmission to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by the Directors.

#### **41. Quorum of meetings**

Until otherwise determined by the Board, a quorum for meetings of the Board is half the number of Board Directors plus one (1).

#### **42. Meetings by telephone or other means of communication**

- (a) The Board may meet either in person or by telephone or by using any other technology consented to by all the Directors. A consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting. A meeting conducted by telephone or other means of communication is taken to be held at the place agreed on by the Directors attending the meeting if at least one of the Directors present at the meeting was at that place for the duration of the meeting.
- (b) The Chair must chair the Directors' meetings unless unavailable to do so.

#### **43. Votes at meetings**

Questions arising at any meeting of the Board are decided by a majority of votes. In the case of an equality of votes, the Chair has a second or casting vote.

#### **44. Powers of meetings**

A meeting of the Board at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

#### **45. Committees**

- 45.1 The Board may delegate any of its powers to Committees consisting of one (1) or more Directors or any other person or persons as the Board thinks fit.
- 45.2 Any Committee so formed must only exercise such functions as are delegated in the motion establishing the Committee and in the terms of reference of the Committee as approved by the Board.
- 45.3 Any Committee must also conform to any directions issued by the Board.
- 45.4 No power delegated to any Committee under this clause may be sub-delegated unless authorised by the terms of the delegation.

#### **46. Finance, audit and risk management committee**

- 46.1 The Board must establish a finance, audit and risk management committee that will operate as directed by the Board.



- 46.2 The finance, audit and risk management committee must be made up of at least three (3) persons.
- 46.3 At least two (2) Directors must be on the finance, audit and risk management committee.
- 46.4 The Director elected to the position of Treasurer must be appointed as chairperson of the finance, audit and risk management committee.

**47. Validity of acts**

- 47.1 All actions at any meeting of the Board or by a Committee or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a member of the Committee.
- 47.2 If the number of Directors is reduced below the number fixed under this Constitution the continuing Directors may act only for the purpose of increasing the number of Directors to the number fixed under this Constitution or of calling a general meeting of the Company. In any case the continuing Directors must act to increase the number of Directors as soon as is practicable.

**48. Material personal interests**

- 48.1 A Director is not disqualified from office from contracting with the Company or any related body corporate of the Company in any capacity by reason of holding the position of Director.
- 48.2 In relation to a contract or arrangement in which a Director has a material personal interest:
- (a) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
  - (b) a contract or arrangement made by the Company or any related body corporate with a Director may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
  - (c) the Director will not be liable to account to the Company for any profit derived in respect of the contract or arrangement merely because of the Director's position or the fiduciary relationship it entails.

- 48.3 Subject to clause 48.4, a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of his or her interest.
- 48.4 A Director with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:
- (a) if all of the following conditions are met:
    - (i) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
    - (ii) if a person who was not a Director at the time the notice was given is appointed as a Director, the notice is given to that person; and
    - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
  - (b) if the Director has given a standing notice of the nature and extent of the interest in accordance with the Law and that standing notice is still effective in relation to the interest; or
  - (c) as otherwise permitted under the Law.
- 48.5 Notices of material personal interest given by Directors must:
- (a) give details of the nature and extent of the Director's interest and the relation of the interest to the affairs of the Company;
  - (b) be given at a Directors' meeting as soon as practicable after the Director becomes aware of his/her interest in the matter; and
  - (c) be recorded in the minutes of the Directors' meeting at which the notice is given.
- 48.6 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not be present while the matter is being considered at the meeting or vote on the matter, except in the following circumstances:
- (a) if the material personal interest is a matter that is not required to be disclosed under this clause or under the Law; or
  - (b) if the Directors who do not have a material personal interest in the matter have passed a resolution that:

(i) identifies the Director, the nature and the extent of the Director's interest in the matter and its relation to the affairs of the Company; and

(ii) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present; or

as otherwise permitted under the Law.

48.7 Nothing in this clause affects the duty of a Director:

(a) who holds any other office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Directors' duties or interests as a Director, to declare at a meeting of Directors, the fact and the nature, character and extent of the conflict; or

(b) to comply with the Law.

#### **49. Resolution in writing**

A resolution in writing signed by a quorum is a valid resolution of the Board. The resolution may consist of several documents in the same form, each signed by one or more of the Directors. A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered to be a document in writing signed by the Director.

## **COMMON SEAL**

#### **50. Common seal**

The Company may have a common seal. If the Company has a common seal, the seal may be used only as determined by the Board.

## **ACCOUNTS**

#### **51. Accounts**

56.1 The Board must:

(a) cause proper accounting and other records to be kept; and

(b) distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto)

accompanied by a copy of the auditor's report thereon as required by the Law to every Member; and

- (c) cause to be made out and laid before each annual general meeting a balance sheet and profit and loss account made up to a date not more than five (5) months before the date of the meeting.

51.2 The Board must from time to time determine in accordance with these regulations at what times and places and under what conditions or directions the accounting and other records of the Company is open to the inspection of Members.

## **FINANCIAL YEAR**

### **52. Company's financial year**

The Company's financial year is from 1 January to 31 December, unless the Directors pass a resolution to change the financial year and seek approval for the change from the Australian Charities and Not-for-profits Commission.

## **AUDIT**

### **53. Audit**

A properly qualified auditor or auditors must be appointed and his or their duties regulated in accordance with the Law.

## **INDEMNITY**

### **54. Indemnity of officers, insurance and access**

54.1 The Company is to indemnify each officer of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer.

54.2 Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company.

54.3 Where the Board considers it appropriate, the Company may:

- (a) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company against any liability incurred by the officer in or arising out of the conduct of the

business of the Company or in or arising out of the discharge of the duties of the officer; and

- (b) bind itself in any contract or deed with any officer of the Company to make the payments.

54.4 Where the Board considers it appropriate, the Company may:

- (a) give a former Director access to certain papers, including documents provided or available to the Board and other papers referred to in those documents; and
- (b) bind itself in any contract with a Director or former Director to give the access.

54.5 In this clause:

- (a) ***duties of the officer*** includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment or nomination of an officer by the Company.
- (b) to the relevant extent means:
  - (i) to the extent the Company is not precluded by law from so doing;
  - (ii) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, in particular, an insurer under any insurance policy); and
  - (iii) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.
- (c) ***liability*** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or otherwise.

## MEDIATION

### 55. Mediation

In the event that a dispute arises between the Directors or between the Directors and a Member or between the Members or between the Company and a Member concerning the affairs of the Company, the parties must attempt to resolve the dispute by mediation as follows:

- 55.1 Either party may start mediation by serving a mediation notice on the other.
- 55.2 The notice must state that a dispute has arisen and identify what is in dispute.
- 55.3 The parties must jointly appoint a mediator. If the parties fail to agree on the appointment within seven (7) days of service of the notice, a mediator will be appointed by the Secretary for the time being or the law institute or law society (as the case requires) of the state or territory in which the Company has its registered office upon the application of either party.
- 55.4 The parties must observe the instructions of the mediator about the conduct of the mediation execute any written agreements that the mediator may reasonably ask them to execute and make a genuine and determined effort to resolve the dispute.
- 55.5 If the dispute is not resolved within 14 days after the mediator is appointed or any other time that the parties are agreed to in writing, the mediation ceases.
- 55.6 The Directors and the Members must as far as is reasonably practicable and provided to do so is not in breach of the Law maintain the status quo concerning the affairs of the Company whilst the mediation process is taking place.
- 55.7 No request for arbitration may be made nor any application made to a court of law except in the case that the status quo of the Company is not maintained until such time as the parties have attending a mediation meeting.
- 55.8 Each party must pay an equal share of the cost of mediation to the Mediator.
- 55.9 If the dispute is resolved, each party must sign the terms of the agreement and the terms are binding on the parties.
- 55.10 The mediation procedure is confidential and written statements prepared for the mediator or for a party and any discussions between the parties and between the parties and the mediator before or during the mediation procedure cannot be used in legal proceedings.

## **PUBLIC FUND**

### **56. Public fund**

- 56.1 The Company will establish and maintain a public fund.
- 56.2 Donations will be deposited into the public fund listed on the Register of Cultural Organisations. These monies will be kept separate from other funds of the Company and will only be used to further the purpose of the Company. Investment of monies in this public fund will be made in accordance with guidelines for public funds as specified from time to time by the Australian Taxation Office.
- 56.3 The public fund will be administered by the Board or a Committee of the Board, the majority of the members of whom must, because of their tenure of some public office or their professional standing, have an underlying community responsibility, as distinct from obligations solely in regard to the cultural purpose of the Company.
- 56.4 No monies/assets in the public fund will be distributed to Members or Directors of the Company, except as reimbursement of out-of-pocket expenses incurred on behalf of the public fund or proper remuneration for administrative services.
- 56.5 The department responsible for the administration of the Register of Cultural Organisations will be notified of any proposed amendments or alterations to provisions for the public fund, to assess the effect of any amendments on the public fund's continuing deductible gift recipient status.
- 56.6 Receipts for gifts to the Company's public fund must state:
- (a) the name of the public fund and that the receipt is for a gift made to the public fund;
  - (b) the Australian business number (ABN) of the Company;
  - (c) the fact that the receipt is for a gift; and
  - (d) any other matter required to be included on the receipt pursuant to the requirements of the ITAA.
- 56.7 The Company must comply with any rules that the treasurer or the minister for the arts make to ensure that gifts made to the public fund will only be used for the Company's purpose.
- 56.8 The Company must provide to the relevant department statistical information on the gifts made to the public fund every 6 months.

## **57. Winding up of public fund**

If upon the winding-up or dissolution of the public fund listed on the Register of Cultural Organisations, there remains after satisfaction of all its debts and liabilities, any property or funds, the property or funds must not be paid to or distributed among the Company's Members, but must be given or transferred to some other fund, authority or institution:

- (a) having a purpose similar to the purpose of this public fund;
- (b) whose rules prohibit the distribution of its income among its members; and
- (c) eligible for tax deductibility of donations under Subdivision 30-B, Section 30-100, of the ITAA and listed on the Register of Cultural Organisations maintained under the Act.

## **NOTICES**

### **58. Service of notices**

A notice may be given by the Company to any Member personally, by leaving it at the Member's Registered Address or by sending it by prepaid post or facsimile transmission addressed to the Member's Registered Address or, in any other case, by other electronic means determined by the Board. If the notice is signed, the signature may be original or printed.

### **59. When notice taken to be served**

Any notice sent by post is taken to have been served at the expiration of two (2) business days after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a Member personally or left at the Member's Registered Address is taken to have been served when delivered. Any notice served on a Member by facsimile transmission is taken to have been served on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error.

### **60. Member not known at Registered Address**

Where a Member does not have a Registered Address or where the Company has a reason in good faith to believe that a Member is not known at the Member's Registered Address, all future notices are taken to be given to the Member if the notice is exhibited in the office for a period of 48 hours (and is taken to be duly served at the commencement of that period) unless and until the Member has a Registered Address.



## **61. Calculation of period of notice**

Where a given number of days' notice or notice extending over any other period is required to be given the day of service is not to be counted in the number of days or other period.

## **WINDING UP**

### **62. Surplus Assets not to be distributed to Members**

If the Company is wound up, any Surplus Assets must not be distributed to a Member or a former Member of the Company, unless that Member or former Member is a Registered Charity as referred to or described in clause 63.

### **63. Distribution of Surplus Assets**

Subject to clause 57, the Law, any other applicable act and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to one or more Registered Charities:

- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 8; and
- (b) which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the Company.

63.2 The decision as to the Registered Charity or Registered Charities to be given the Surplus Assets must be made by a Special Resolution of Members at or before the time of winding up. If the Members do not make this decision, the Company may apply to the Supreme Court to make this decision.

## **OTHER**

### **64. Making public statements**

No person may make any public statement on behalf of the Company unless authorised by the Board.

### **65. Adoption and amendment of Constitution**

65.1 The Members may amend or repeal this Constitution, or a provision of this Constitution, by Special Resolution.

65.2 The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a Registered Charity.

- 65.3 A notice of the proposed alterations must be provided by properly addressing, prepaying and posting a letter or sending an email to every Member at least 21 days prior to the date of the meeting.
- 65.4 A Special Resolution amending, adopting or repealing this Constitution takes effect:
- (a) if no later date is specified in the resolution, then on the date on which the resolution is passed; or
  - (b) on a later date specified in, or determined in accordance with, the resolution.
- 65.5 The Company must send a copy of this Constitution (as amended from time to time) to a Member within seven (7) days if the Member asks the Company, in writing for the copy and pays any fee (up to the prescribed amount) required by the Company.