



Constitution of Regional Arts Victoria

A Company Limited by Guarantee
Corporations Act 2001

ACN 005 556 025

As adopted by the organisation 19 March 2011

Aitken Partners

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Corporations Act 2001
Company Limited by Guarantee

Constitution

of

Regional Arts Victoria Ltd

Introduction

1. Replaceable rules excluded

1.1 The replaceable rules contained in the Act do not apply to the Company.

2. Definitions and interpretation

2.1 **Definitions** In this constitution:

- (1) **Act** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- (2) **Auditor** means any person appointed for the time being to perform the duties of an auditor of the Company;
- (3) **Business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;
- (4) **Company** means Regional Arts Victoria Ltd ACN 005 556 025;
- (5) **The Executive Director** shall mean the Chief Executive Officer of Regional Arts Victoria;
- (6) **The Board** shall mean the Board of Directors of Regional Arts Victoria Ltd ACN 005 556 025;
- (7) **Board Member** shall mean any person elected, co-opted or appointed to the Board of Regional Arts Victoria pursuant to rules 68 to 73 inclusive;
- (8) **Director** shall mean a member of the Board of Regional Arts Victoria as elected pursuant to rules 68 to 73 of this constitution;

- (9) **General Director** shall mean a Director of the Board of Regional Arts Victoria elected pursuant to rule 70 and residing anywhere in regional Victoria.
- (10) **Regional Director** shall mean a Director of the Board of Regional Arts Victoria elected pursuant to rule 70 and a resident of one of the four regions of regional Victoria as determined by the Board at that time.
- (11) **Affiliate** and **Affiliate Members** shall mean any organisation accepted as a member by the Company (and includes the individual members of that organisation) whose membership is current in accordance with this Constitution. An Affiliate for the purpose of this constitution does not include an organisation whose membership is either suspended or who does not contribute financially to the Company.
- (12) **Ordinary Member** shall mean any person elected or co-opted to the Board of Regional Arts Victoria pursuant to rules 70 and 71, the Foundation Members and any other persons the Board admits to Ordinary Membership in accordance with this constitution;
- (13) **Voting Member** shall mean any person nominated by an Affiliate and accepted by the Directors of the Company as a Voting Member of Regional Arts Victoria pursuant to rules 18 and 19;
- (14) **Honorary or Life Member** shall refer to any person approved by the Board as an Honorary or Life Member pursuant to rule 21;
- (15) **Foundation Members** are those persons listed below, who are identified as either an Ordinary Member or the Company Secretary at the date this constitution is adopted by the Company:
Lindy ALLEN;
Jude ANDERSON;
Paula BENSON;
Kim CHALMERS;
Michele DAVIES;
Peter GIDDINGS;
Dennis GOLDNER;
Ross LAKE;
Julie MILLOWICK;
Jacinda O’SULLIVAN;
Martin PATEN;
Rob ROBSON; and
Liz ZITO
- (16) **Register** means the register of members to be kept pursuant to the Act;
- (17) **Company Secretary** means any person appointed to perform the duties of secretary of the Company and any person appointed to act temporarily as secretary; and
- (18) **Special Resolution** means a resolution which has been notified in accordance with section 249L(c) of the Act and that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

2.2 Interpretation

- (1) Reference to:

- (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular; and
 - (c) **In writing** and **written** shall mean written or printed or partly written or printed;
- (2) Except so far as the contrary intention appears in this constitution:
- (a) an expression has in this constitution the same meaning as in the Act; and
 - (b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (3) “Including” and similar expressions are not words of limitation.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

3. Objects

3.1 The objects for which the Company is established are:

- (1) to foster and enhance the capacity of regional communities for sustainable, self-determined cultural development;
- (2) to build the capacity of the Company’s Affiliate Members to lead local cultural development;
- (3) to expand awareness and raise the profile of regional arts and culture, the Company, it’s Affiliate Members and its activities;
- (4) to increase the resources, knowledge, skills and capacity of Affiliate Members, regionally-based artists, organisations, communities and their networks;
- (5) to play a leading arts advocacy role;
- (6) to create, curate, produce and/or deliver cultural programs to regional and remote communities;
- (7) to deliver communications and marketing programs;
- (8) to deliver excellent arts management support and services; and
- (9) to ensure effective corporate governance.

4. Powers

4.1 The Company has all the powers of an individual and a body corporate but does not have the power to

issue shares.

- 4.2 Despite rule 4.1 the powers of the Company are ancillary to and exercisable only to pursue the objects of the Company set out in rule 3.

5. Public fund

- 5.1 The Company has established and will maintain a public fund.
- 5.2 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 objects of the Company. Investment of monies in this fund will be made in accordance with guidelines for public funds as specified by the Australian Taxation Office.
- 5.3 The fund will be administered by a management committee or a subcommittee of the management committee, the majority of whom, 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 objectives of the Company.
- 5.4 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.
- 5.5 Receipts for gifts to the public fund must state:
- (1) the name of the public fund and that the receipt is for a gift made to the public fund;
 - (2) the Australian Business Number of the Company;
 - (3) the fact that the receipt is for a gift; and
 - (4) any other matter required to be included on the receipt pursuant to the requirements of the *Income Tax Assessment Act 1997*.

6. Application of income and property

- 6.1 The income and property of the Company, from wherever it is derived, must be applied solely towards the promotion of the objects of the Company set out in rule 3.

7. No distribution to members

- 7.1 No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise to the Director's of the Company or its members:
- 7.2 Rule 7.1 does not prevent:
- (1) the payment in good faith of remuneration to any officer, servant or member of the Company in

return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;

- (2) the payment of interest at a rate not exceeding 12% per annum on money borrowed from any member of the Company;
- (3) the payment of reasonable and proper rent by the Company to a member of the Company for premises leased by the member to the Company; or
- (4) the reimbursement of expenses incurred by any member on behalf of the Company.

8. Limited liability

8.1 The liability of the members is limited.

9. Guarantee

9.1 Every Ordinary Member of the Company undertakes to contribute an amount not exceeding \$50 to the property of the Company in the event of its being wound up while the member is a member or within 1 year after the member ceases to be a member, if required for payment:

- (1) of the debts and liabilities of the Company (contracted before the member ceases to be a member);
- (2) of the costs, charges and expenses of winding up; and
- (3) for the adjustment of the rights of the contributories among themselves.

9.2 A member who is:

- (1) a Voting Member or Life Member of the Company, who is not also an Ordinary Member; or
- (2) an Affiliate Member;

shall not be liable for any debts of the Company in the event of the Company being wound up.

Membership

10. Number of members

10.1 The Board may from time to time register an increase or decrease in the number of members.

11. Membership

11.1 The members of the Company are:

- (1) the Foundation Members;
- (2) Any other persons the Board admits to membership in accordance with this constitution.

12. Categories of membership

12.1 The categories of membership are:

- (1) Foundation Members;
- (2) Ordinary Members;
- (3) Affiliate Members;
- (4) Voting Members;
- (5) Honorary or Life Members.

12.2 Any other additional category of membership passed by resolution of the Board.

13. Application for Ordinary Membership

13.1 Any person who is a Voting Member of an Affiliate shall be eligible for Ordinary Membership of the Company.

13.2 Admission to Ordinary Membership is by election pursuant to rules 70 and 71 of this Constitution.

13.3 Any member who ceases to be a Voting Member of an Affiliate shall also cease to be an Ordinary Member of the Company.

13.4 Any persons who have been co-opted by the Board shall be eligible for Ordinary Membership of the Company.

13.5 The Company Secretary shall be eligible for Ordinary Membership of the Company.

13.6 All Ordinary Members are Voting Members of the Company.

13.7 An individual cannot apply for Ordinary Membership of the Company.

14. Application for Affiliate Membership

14.1 Any Affiliate Member that was an Affiliate Member of the Company as at the date of this constitution

continues to be an Affiliate Member of the Company from the date this constitution is adopted by the Company on the terms set out in this constitution.

- 14.2 Any regionally-based cultural organisation that is incorporated as a not-for-profit company or association may apply for Affiliate Membership of the Company.
- 14.3 The Board at its discretion may by resolution grant affiliation with the Company to incorporated associations or other incorporated bodies, which shall thereafter be known as Affiliates.
- 14.4 The Board at its discretion may by resolution grant affiliation with the Company to any statutory corporation or governmental or semi-governmental body or department, which shall thereafter be known as Affiliates.
- 14.5 No individual may apply for Affiliate Membership of the Company.
- 14.6 Each Affiliate shall pay to the Company an annual affiliation fee of such amount as may be fixed by the Company from time to time.
- 14.7 Each Affiliate shall pay to the Company such levies as may be fixed by the Company from time to time.
- 14.8 The Board at its absolute discretion may suspend any Affiliate from membership, but such suspension may be set aside by resolution by the Board at a general meeting of the Company.
- 14.9 The Company may by Special Resolution expel or suspend any Affiliate from affiliation in accordance with this constitution.
- 14.10 Despite anything in this constitution to the contrary, an Affiliate Member:
 - (1) has the right to receive notices of and to attend and be heard at any general meeting; but
 - (2) has no right to vote at any general meeting other than the right to nominate four voting members who must observe the procedures for voting as outlined in this constitution;
 - (3) is entitled to participate in insurance policies entered into by the Company on behalf of its members and any other benefits that the Company may from time to time make available.

15. Form of application for Affiliate Membership

- 15.1 An application for Affiliate Membership must be:
 - (1) in writing in a form approved by the Board;
 - (2) completed as indicated in all sections and signed by the applicant; and
 - (3) accompanied by any other documents or evidence as to qualification for affiliation which the directors require.

16. Admission as an Affiliate Member

- 16.1 The Board must consider in its absolute discretion to accept or reject admission of the applicant as an Affiliate of the Company.
- 16.2 If the application is rejected the Board is not required to give a reason for the rejection.
- 16.3 If an applicant is accepted for membership an officer of the Company must:
- (1) notify the applicant in writing; and
 - (2) request payment of:
 - (a) the application fee (if any) as determined by the Company; and
 - (b) the annual subscription fee as determined by the Company.
- 16.4 The applicant becomes an Affiliate upon payment of the application fee (if any) and the annual subscription.
- 16.5 The name and details of the Affiliate must be entered in the Register.

17. Time Limit to receive fee (if applicable)

- 17.1 If payment of the application fee (if applicable) and the annual subscription is not received within 2 months after the date that the request for payment is made (in accordance with clause 16.3) then the Board may revoke their acceptance of the applicant for membership.

18. Application to become a Voting Member

- 18.1 Application for Voting Membership of the Company shall be made by the Affiliate nominating a member of that Affiliate to become a Voting Member, in writing to the Board.

19. Admission as a Voting Member

- 19.1 The Board may accept or reject the nomination made by the Affiliate and accept or reject the nominated person as a Voting member of the Affiliate at its absolute discretion;
- 19.2 The Board will not be required to give a reason for the rejection of an application from Voting Membership.
- 19.3 Each person admitted to be a Voting Member of the Company in accordance with this constitution shall be and remain a Voting Member of the Company until one of the following events occur:
- (1) death of the Voting Member;
 - (2) bankruptcy of the Voting Member;

- (3) retirement or resignation of the Voting Member;
 - (4) the Voting Member is suspended or removed by the Board as a Voting Member; or
 - (5) the Voting member otherwise ceases to be a member of the Affiliate in accordance with this constitution.
- 19.4 Notice must be given by the secretary of an Affiliate Member (or the other appropriate officer) of the nomination, withdrawal of nomination of a potential voting member, or the resignation of a Voting Member.
- 19.5 Notwithstanding anything else in this constitution, each Affiliate may only have four (4) members as a Voting Member of the Company at any one time.

20. Foundation Members

- 20.1 Foundation Members become Ordinary Members of the Company on the date this constitution is adopted by the Company.
- 20.2 Foundation Members cease to be members of the Company on the day they cease to be Ordinary Members of the Company.
- 20.3 Foundation Members are not required:
- (1) to have any qualification for membership;
 - (2) to pay any application fee; or
 - (3) to pay an annual subscription
- 20.4 Foundation Members must otherwise comply with this constitution.

21. Honorary or Life Members

- 21.1 If, in the opinion of the Board, a person, not being a member of the Company, has given outstanding and meritorious service to the arts by the practice of the same or in the advancement and administration of the same, the directors may nominate the person as an Honorary or Life Member of the Company.
- 21.2 A person is admitted as an Honorary or Life Member of the Company on the date that is the later of:
- (1) the person consenting in writing to be an Honorary or Life Member; and
 - (2) the nomination being approved by an Ordinary Resolution of members at a general meeting.
- 21.3 Any person who was an Honorary or Life Member of the Company as at the date of this constitution becomes an Honorary or Life Member of the Company on the date this constitution is adopted by the Company.
- 21.4 An Honorary or Life Member has no rights and privileges of membership, other than the right to receive

notices of, attend, be heard and vote at any general meeting, and is otherwise subject to this constitution.

22. Notification by members

- 22.1 Each member must promptly notify the secretary in writing of any change in their qualification to be a member of the Company.
- 22.2 Each corporate member must promptly notify the Company Secretary in writing of a change in a nominated representative.
- 22.3 A person nominated as a nominated representative must consent to the nomination in writing.

23. Expulsion of members

- 23.1 The Board may expel a member of the Company if:
- (1) any member does not comply with the provisions of this constitution;
 - (2) a member is in the opinion of the Board, guilty of conduct that is unbecoming of a member of the Company (in the opinion of the Board); or
 - (3) the actions of a member are prejudicial to the interests of the Company; or
- 23.2 The process for the expulsion for a member of the Company is as follows:
- (1) At least 7 days prior to a proposed meeting to vote on the expulsion of a member from the Company, the member must be given a notice that includes:
 - (a) the day, date and time of the meeting;
 - (b) the nature of the meeting and the intention to propose the resolution for expulsion;
 - (c) state that the resolution proposed will be a resolution to expel the member from membership of the Company.
 - (2) The member facing expulsion shall be given at the said meeting an opportunity to put forward oral or written explanations or defences, prior to the motion for expulsion being put to vote.
 - (3) On receipt of the notice and up to 48 hours prior to the proposed meeting, the member may make an application to the Company Secretary in writing to have the question of expulsion voted on at General Meeting of the Company. In such a case the Board shall call an Extraordinary General Meeting of the Company and if a motion for the member's expulsion is passed by Special Resolution then the member shall be expelled.

24. Register of members

24.1 The Company must keep a Register in accordance with the Act.

24.2 The following must be entered in the Register in respect of each member:

- (1) the full name of the member;
- (2) the residential address, facsimile number and electronic mail address, if any, of the member;
- (3) the category of membership;
- (4) the date of admission to and cessation of membership;
- (5) the date of last payment of the member's annual subscription;
- (6) in the case of an Affiliate Member, the full name, address, facsimile number and electronic mail address, if any, of its nominated representative; and
- (7) such other information as the Board requires.

24.3 Each member and nominated representative must notify the Company Secretary in writing of any change in that person's name, address, facsimile number or electronic mail address within 1 month after the change.

Application fee and annual subscription

25. Application fee

25.1 The application fee payable by each applicant for membership is the sum the Board determine for each category of membership.

25.2 No application fee is payable by any Honorary or Life Member.

26. Annual subscription

26.1 The annual subscription payable by any class of member to the Company is the sum the Board determines. The Board reserves the right to amend the annual subscription fee and the formula for its calculation at anytime, exercising its absolute discretion.

26.2 The annual subscription fee as at the date this constitution is adopted by the Company is as follows:

- (1) for an Ordinary Member, Life Member or Voting Member is nil;
- (2) for an Affiliate Member, is calculated according to their annual turnover of the Affiliate in accordance with the following formula:

- (a) Annual turnover of under \$5,000.00 shall equal \$100
- (b) Annual turnover of over \$5,000.00 but under \$10,000.00 shall equal \$140.00;
- (c) Annual turnover of over \$10,000.00 but under \$25,000.00 shall equal \$200.00;
- (d) Annual turnover of over \$25,000.00 but under \$60,000.00 shall equal \$260.00; and
- (e) Annual turnover of over \$60,000.00 shall equal \$300.00.

26.3 All annual subscriptions are due and payable in advance on 1 July in each year.

26.4 No annual subscription is payable by a voting member or any Honorary or Life Member.

27. Unpaid annual subscriptions

27.1 If:

- (1) the annual subscription of any member remains unpaid for 2 months after it becomes payable; and
- (2) a notice of default is given to the member following a resolution of the Board to do this;

the member ceases to be entitled to any of the rights or privileges of membership but these may be reinstated on payment of all arrears if the directors see fit.

Cessation of membership

28. Resignation

28.1 Any member may resign from membership of the Company by giving written notice to the Company Secretary.

28.2 The resignation of a member takes effect on the date of receipt of the notice of resignation or any later date provided in the notice.

29. Failure to pay

29.1 If any member has not paid all arrears of annual subscriptions under rule 26 or, if paid, the member's rights and privileges are not reinstated:

- (1) the member remains liable for all the obligations and liabilities of membership until the expiration of 6 months after the date of notification under rule 27.1(2); and
- (2) the member ceases to be a member and member's name must be removed from the Register at

the expiration of the 6 month period.

30. Cessation of membership

30.1 Any Ordinary Member ceases to be an Ordinary Member:

- (1) on the death of the Ordinary Member; or
- (2) if the member is expelled under rule 23 or 31.
- (3) if their eligibility for Ordinary Membership expires in accordance with rules 69-73 and rule 76.

30.2 An Affiliate Member ceases to be a member:

- (1) if it is wound up or is otherwise dissolved or deregistered; or
- (2) if it is expelled under rule 23 or 31.

30.3 A voting member ceases to be a member:

- (1) when he/she ceases to be a fully subscribed member of an Affiliate Member of the Company; or
- (2) if the member is expelled under rule 23 or 31; or
- (3) in accordance with rule 30.1

30.4 An Honorary or Life Member ceases to be a member:

- (1) if the member is an individual, in accordance with rule 30.1;
- (2) if the Board, for any reason, request in writing the resignation of the member and the member does not resign within 2 months after the request is sent.

31. Disciplining members

31.1 If any member:

- (1) wilfully refuses or neglects to comply with the provisions of this constitution; or
- (2) is guilty of any conduct which, in the opinion of the directors, is unbecoming of a member or prejudicial to the interest of the Company;

the Board may resolve to censure, fine, suspend or expel the member from the Company and, in the case of expulsion, to remove the member's name from the Register.

31.2 In exercising their powers under rule 31.1, in the case of an Affiliate Member, the Board must not fine a member an amount exceeding the annual subscription of an Affiliate Member, or in the case of a Voting Member, the amount of annual subscription paid by them to their Affiliate Member

- 31.3 At least 1 week before the meeting of the Board at which a resolution of the nature referred to in rule 31.1 is passed the Board must give to the member notice of:
- (1) the meeting;
 - (2) what is alleged against the member; and
 - (3) the intended resolution.
- 31.4 At the meeting and before the passing of the resolution, the member must have an opportunity of giving orally or in writing any explanation or defence the member sees fit.
- 31.5 A member may, by notice in writing lodged with the Company Secretary at least 48 hours before the time for holding the meeting at which the resolution is to be considered by the directors, elect to have the question dealt with by the Company in general meeting and in that event, a general meeting of the Company must be called for that purpose.
- 31.6 If at the meeting a resolution to the same effect as the resolution which was to be considered by the Board is passed by a majority of 2/3 of those present and voting (and the vote must be taken by secret ballot), the member concerned must be punished in the manner resolved and in the case of a resolution for expulsion the member is expelled and the member's name must be removed from the Register.
- 31.7 If any member ceases to be a member under rule 31.6, the Board may reinstate the member and restore the name of that member to the Register upon and subject to any terms and conditions they see fit.

32. Effect of cessation of membership

- 32.1 If any member ceases to be a member under this constitution, the member remains liable to pay to the Company for any money which, at the time of the member ceasing to be a member, the member owes to the Company on any account and for any sum not exceeding \$50 for which the member is liable under rule 9 of this constitution.

Meetings of members

33. Circulating Resolutions

- 33.1 This rule 33 applies to Resolutions which the Act, or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.
- 33.2 The Company may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 33.3 Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.

- 33.4 The resolution is passed when the last member signs.
- 33.5 If the Company receives by facsimile transmission a copy of a document referred to in this rule 33 it is entitled to assume that the copy is a true copy.

34. Calling of general meeting

- 34.1 A majority of directors may call a general meeting whenever they see fit.
- 34.2 Except as permitted by law, a general meeting, to be called the **annual general meeting**, must be held at least once in every calendar year.
- 34.3 Except as provided in the Act, no member or members may call a general meeting.

35. Amount of notice of meeting

- 35.1 Subject to the provisions of the Act as to short notice, at least 21 days' notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Company.

36. Persons entitled to notice of general meeting

- 36.1 Written notice of a meeting of the Company's members must be given individually to:
- (1) each Ordinary, Voting, Affiliate, Life or Honorary Member;
 - (2) each director; and
 - (3) the Company's auditor.
- 36.2 The Company is only required to give notice of general meetings to those persons entitled to receive notice under this constitution and the Act.

37. How notice is given

- 37.1 The Company may give the notice of meeting to a member:
- (1) personally;
 - (2) by sending it by post to the address for the member in the Register or the alternative address (if any) nominated by the member;
 - (3) by sending it to the facsimile number or electronic address (if any) nominated by the member;
 - (4) by sending it by other electronic means (if any) nominated by the member; or

- (5) by notifying the member in accordance with rule 37.2.

37.2 If the member nominates:

- (1) an electronic means (**nominated notification means**) by which the member may be notified that notices of meeting are available; and
- (2) an electronic means (**nominated access means**) the member may use to access notices of meeting; the Company may give the member notice of the meeting by notifying the member (using the nominated notification means):
- (3) that the notice of meeting is available; and
- (4) how the member may use the nominated access means to access the notice of meeting.

38. When notice is given

38.1 A notice of meeting sent by post is taken to be given 3 days after it is posted.

38.2 Except as provided by rule 38.3, a notice of meeting given to a member under rule 37.1(3) is taken to be given on the business day after it is sent.

38.3 A notice of meeting given to a member under rule 37.1(3) is not effective if:

- (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report that the transmission was unsuccessful;
- (2) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
- (3) in either case the addressee notifies the Company immediately that the notice was not fully received in a legible form.

38.4 A notice of meeting given to a member under rule 37.2 is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.

38.5 A certificate signed by a manager, secretary or other officer of the Company that the notice was posted or given in accordance with this rule 38 is conclusive evidence of the matter.

39. Period of notice

39.1 Subject to the Act and this constitution where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day upon which the notice expires is included.

40. Contents of notice

40.1 A notice of a general meeting must:

- (1) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used);
- (2) state the general nature of the meeting's business;
- (3) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the resolution;
- (4) be worded and presented in a clear, concise and effective manner; and
- (5) contain a statement setting out the following information:
 - (a) that any member who is entitled to vote in accordance with rule 57 has a right to appoint a proxy; and
 - (b) that the proxy must be a member of the Company who is also entitled to vote in accordance with rule 57.

41. Notice of adjourned meeting

41.1 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

42. Accidental omission to give notice

42.1 The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this constitution does not invalidate the proceedings at or any resolution passed at the meeting.

43. Postponement of general meeting

43.1 The Board may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by members as provided by the Act) for not more than 42 days after the date for which it was originally called.

43.2 Whenever any meeting is postponed (as distinct from being adjourned under rule 45.3 or rule 46.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

44. Technology

44.1 The Company may hold a meeting of its members at 2 or more venues using any technology that gives the

members as a whole a reasonable opportunity to participate.

45. Quorum

- 45.1 The quorum for a meeting of the Company's members is either twenty (20) or a majority of members entitled to vote, whichever is lesser, and the quorum must be present at all times during the meeting.
- 45.2 In determining whether a quorum is present, individuals attending as proxies are counted. However, if a member has appointed more than 1 proxy, only 1 of them is counted. If an individual is attending both as a member and as a proxy, the individual is counted only once.
- 45.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
- (1) where the meeting was called by the members or upon the requisition of members, the meeting is dissolved; or
 - (2) in any other case, the meeting is adjourned to the date, time and place the Board specifies. If the Board do not specify 1 or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified – the same day in the next week;
 - (b) if the time is not specified – the same time; and
 - (c) if the place is not specified – the same place.
- 45.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the members present shall constitute a quorum.

46. Chair at general meetings

- 46.1 The chairperson of the Company, if present, presides as chair at every general meeting.
- 46.2 Where a general meeting is held and:
- (1) there is no chairperson of the Company; or
 - (2) the chairperson is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;
- the vice-chairperson of the Company if present presides as chair of the meeting or, if the vice-chairperson is not present or is unwilling to act, the directors present may appoint 1 of their number to be chair of the meeting and in default of their doing so the members present may appoint any 1 of their number to be chair of the meeting.
- 46.3 The chair may, at any time during the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place. In exercising

this discretion, the chair may, but need not, seek the approval of the members present. Unless required by the chair, no vote may be taken or demanded by the members present in respect of any adjournment.

- 46.4 The chair of the meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at that meeting. The rulings of the chair of a meeting on all matters relating to the procedure and conduct of the meeting are final and no motion of dissent from those rulings may be accepted.
- 46.5 The chair of the meeting may in his or her absolute discretion refuse admission to, or require to leave and remain out of the meeting, any person who is not a member, director or auditor of the Company.
- 46.6 (1) The Company Secretary is entitled to be present and to speak at any general meeting.
- (2) The auditor of the Company from time to time and any assistant of the auditor who is not a member is entitled to be present and to speak at any general meeting on any part of the meeting's business that concerns the auditor in the capacity as auditor of the Company.
- (3) Any professional adviser of the Company (including, without limitation, a solicitor or financial adviser), at the request of any director, is entitled to be present and, at the request of the chair, to speak at any general meeting. However, subject to the Act and this constitution, the Company is not obliged to send a notice of meeting to any professional adviser.

47. Business at adjourned meetings

- 47.1 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

Proxies and body corporate representatives

48. Who can appoint a proxy

- 48.1 A member who is entitled to attend and cast a vote at a meeting of the Company's members may appoint an individual as the member's proxy to attend and vote for the member at the meeting. The proxy must be a member who is entitled to vote at a meeting of the Company's members.

49. Rights of proxies

- 49.1 A proxy who is appointed in accordance with rule 48.1 to attend and vote for a member has the same rights as the member:
- (1) to speak at the meeting;
- (2) to vote (but only to the extent allowed by the appointment); and
- (3) to join in a demand for a poll.

- 49.2 If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.
- 49.3 A proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.
- 49.4 A proxy may be revoked at any time by notice in writing to the Company.
- 49.5 No person may hold more than two proxies.

50. When proxy form must be sent to all members

- 50.1 If the Company sends a member a proxy appointment form for a meeting:
- (1) if the member requested the form or list – the Company must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
 - (2) otherwise – the Company must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

51. Appointing a proxy

- 51.1 An appointment of a proxy is valid if it is signed or otherwise electronically authenticated (as referred to in regulation 2G.2.01 of the *Corporations Regulations 2001*, and in rule 51.3) by the member making the appointment and contains the following information:
- (1) the member's name and address;
 - (2) the Company's name;
 - (3) the proxy's name or the name of the office held by the proxy; and
 - (4) the meetings at which the appointment may be used. An appointment may be a standing one.
 - (5) the name of the Affiliate Member who has nominated the proxy as a voting member
- 51.2 An electronically authenticated appointment of a proxy must in addition to rule 51.1:
- (1) include a method of identifying the member; and
 - (2) include a method of verifying the authority of the proxy to vote at a meeting of the Company
 - (3) include an indication of the member's approval of the information communicated.
- 51.3 If the electronically authenticated appointment of a proxy is done through either email or internet-based voting:

- (1) the member must be identified by personal details such as the member's name, personal address and date of birth; and
- (2) the member's approval must be communicated by a form of security protection (for example, the entering of a confidential identification number such as a shareholder registration number or holder identification number).

51.4 An undated appointment is taken to have been dated on the day it is given to the Company.

51.5 An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- (1) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (2) if the proxy has 2 or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands;
- (3) if the proxy is the chair – the proxy must vote on a poll, and must vote that way; and
- (4) if the proxy is not the chair – the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

This rule 51.5 does not affect the way that the person can cast any votes the person holds as a member themselves.

51.6 An appointment does not have to be witnessed.

51.7 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

52. Form of proxy sent out by Company

52.1 A form of proxy sent out by the Company may be in a form determined by the directors but must:

- (1) enable the member to specify the manner in which the proxy must vote in respect of a particular Resolution; and
- (2) leave a blank for the member to fill in the name of the person primarily appointed as proxy.

52.2 The form may provide that if the member leaves it blank as to the person primarily appointed as proxy or if the person or persons named as proxy fails or fail to attend, the chair of the meeting is appointed proxy.

53. Receipt of proxy documents

53.1 For an appointment of a proxy for a meeting of the Company's members to be effective, the proxy's appointment form must be received by the Company at least 48 hours before the meeting.

- 53.2 If a meeting of the Company's members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- 53.3 The Company receives an appointment or authority:
- (1) when it is received at any of the following:
 - (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic mail address specified for the purpose in the notice of meeting; or
 - (2) if the notice of meeting specifies other electronic means by which a member may give the document – when the document given by those means is received by the Company and complies with rules 51.2 and 51.3.
- 53.4 An appointment of a proxy is ineffective if:
- (1) the Company receives either or both the appointment or authority at a fax number or electronic address; and
 - (2) a requirement (if any) in the notice of meeting that:
 - (a) the transmission be verified in a way specified in the notice; or
 - (b) the proxy produce the appointment and authority (if any) at the meeting; is not complied with.

54. Validity of proxy vote

- 54.1 Unless the Company receives written notice of one of the following matters before the start or resumption of the meeting at which the proxy votes, a vote cast by the proxy will be valid even if:
- (1) the appointing member dies;
 - (2) the member is mentally incapacitated; or
 - (3) the member revokes the proxy's appointment
- before the proxy votes.
- 54.2 A proxy is not revoked by the member attending and taking part in the meeting unless the member actually votes at the meeting on a Resolution for which the proxy is proposed to be used.

55. Voting members

55.1 An Affiliate Member may appoint up to four (4) individuals, who are fully subscribed members of that Affiliate, as representatives to exercise all or any of the powers the Affiliate may exercise:

- (1) at meetings of the Company's members;
- (2) at meetings of creditors or debenture holders;
- (3) relating to Resolutions to be passed without meetings; or
- (4) in the capacity of a member's proxy appointed under rule 48. The appointment may be a standing one.

55.2 An Affiliate may appoint up to four (4) representatives but only these four (4) representatives may exercise the Affiliate's powers at any one time.

56. Attorney of member

56.1 An attorney for a member may do whatever the member could do personally as a member, but if the attorney is to vote at a meeting of members or a class of members the instrument conferring the power of attorney or a certified copy of it must be produced to the Company at least 48 hours before the meeting, in the same way as the appointment of a proxy.

Voting at meetings of members

57. How vote may be exercised

57.1 Subject to rules 58 and 59 at any general meeting of members, each ordinary, voting, life or Honorary member present has 1 vote on a show of hands and on a poll.

57.2 The vote may be exercised in person or by proxy or attorney.

58. Voting disqualification

58.1 A member is not entitled to vote at a general meeting if the annual subscription of the member to the Affiliated member who has nominated them is more than 1 month in arrears at the date of the meeting or the postponed or adjourned meeting.

59. Objections to right to vote

59.1 A challenge to a right to vote at a meeting of members:

- (1) may only be made at the meeting; and
- (2) must be determined by the chair, whose decision is final.

59.2 A vote not disallowed following the challenge is valid for all purposes.

60. How voting is carried out

- 60.1 A Resolution put to the vote at a meeting of the Company's members must be decided on a show of hands unless a poll is demanded.
- 60.2 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 60.3 Unless otherwise required by this constitution or the Act, all Resolutions of the Company are ordinary Resolutions which are Resolutions passed by more than 50% of the votes cast by members entitled to vote on the Resolutions.

61. Matters on which a poll may be demanded

- 61.1 A poll may be demanded on any Resolution.
- 61.2 A demand for a poll may be withdrawn.

62. When a poll is effectively demanded

- 62.1 At a meeting of the Company's members, a poll may be demanded by:
- (1) at least 3 members entitled to vote on the Resolution;
 - (2) a member or members with at least 5% of the votes that may be cast on the Resolution on a poll;
or
 - (3) the chair.
- 62.2 The poll may be demanded:
- (1) before a vote is taken;
 - (2) before the voting results on a show of hands are declared; or
 - (3) immediately after the voting results on a show of hands are declared.

63. When and how polls must be taken

- 63.1 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- 63.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- 63.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 63.4 The result of the poll is the Resolution of the meeting at which the poll was demanded.

64. Chair's casting vote

- 64.1 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any vote he or she may have in his or her capacity as a member or proxy.
- 64.2 The chair has discretion both as to use of the casting vote and as to the way in which it is used.

Annual general meeting

65. Timing of annual general meeting

- 65.1 The annual general meeting will be held in each calendar year on a date fixed by the Board to be no later than 31 May of that calendar year.

66. Business of an annual general meeting

- 66.1 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:
- (1) the consideration of the annual financial report, directors' report, auditor's report and any other reports on the activities of the Company during the preceding financial year;
 - (2) the consideration and decision upon any Resolution which has been submitted in accordance with this constitution;
 - (3) the confirmation of the minutes of the previous annual general meeting;
 - (4) the election of directors;
 - (5) the appointment of the auditor; and
 - (6) the fixing of the auditor's remuneration.

All other business transacted at an annual general meeting and all business transacted at any other general meeting is special business.

- 66.2 The business of the annual general meeting also includes any other business which under this constitution or the Act ought to be transacted at an annual general meeting.
- 66.3 The chair of the annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- 66.4 If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

67. Resolutions proposed by members

- 67.1 A member may not at any meeting move any Resolution relating to special business unless:
- (1) members with at least 5% of the votes that may be cast on the Resolution have given the Company notice of the Resolution or the requirements of section 249N of the Act have otherwise been satisfied, and 2 months notice has elapsed since the notice was given; or
 - (2) the Resolution has previously been approved by the Board.

Appointment of directors

68. Number of directors

- 68.1 The Board of directors will be comprised of eight (8) members as follows:
Four (4) General Directors elected by the membership
Four (4) Regional Directors elected by the membership
- 68.2 The directors may co-opt a further four (4) members to complement the skills and experience of elected members as it sees fit.
- 68.3 The directors may, by Resolution, alter the balance of General and Regional elected directors but any alteration to the number of elected directors must be decided by Resolution at an annual general meeting.
- 68.5 The directors may, by Resolution, increase or reduce the number of co-opted Directors referred to in rule 68.2 as it sees fit for the smooth and effective operations of the Company.

69. Elected Directors' qualifications

69.1 No person may be an Elected unless:

- (1) that person has one or more of the following skills and/or expertise in the following areas:
 - (a) governance;
 - (b) business/financial management;
 - (c) legal expertise in a non-profit organisation;
 - (d) arts, arts practice, arts administration;
 - (e) regional economic and/or tourism development;
 - (f) regional community and cultural services development;
 - (g) human resources management;
 - (h) information technology communications;
 - (i) risk management/insurance; or
 - (j) marketing/fundraising; and
- (2) that person is a fully subscribed member of an Affiliate of the Company.
- (3) that person has been nominated by the Affiliate to which they have membership as a voting member of the Company.

69.2 No person that is an employee, agent or contractor to the Company may be an Elected Director.

70. Nomination and Election Procedures for Elected Directors

70.1 Nominations shall be called for by the Chairperson in writing no less than 30 days prior to each Annual General Meeting for candidates for the ensuing three year period for those offices which fall vacant at that Annual General Meeting.

70.2 Each of the nominations referred to in rule 70.1 shall be proposed and seconded by voting members of the Company in writing and signed by the nominee and such nominations shall be received by the Chairperson up until such date as determined by the Chairperson for the effective management of the election process,

70.3 In the event of there being more than one candidate for each of the above positions, a postal ballot shall be held prior to the Annual General Meeting and the candidate or candidates who obtain the highest number of votes shall be declared elected.

70.4 The Board shall divide Victoria into four regions and each of the nominations for the position as a Regional Director representing each such region shall be proposed and seconded by voting members situated in

that region. In the event of there being more than one candidate for the position of Regional Director representing any such region a postal ballot of voting members of the Company who are members of Affiliates situated in that region shall be held prior the Annual General Meeting.

- 70.5 If prior to any Annual General Meeting no nomination is received for the position of a Director representing any region pursuant to rule 70.4, the Annual General Meeting may empower the Board to appoint members to make up the deficiency.
- 70.6 Nominees for the position of General Director shall be proposed and seconded by voting members from anywhere in regional Victoria. Nominees for the role of General Director may reside anywhere in regional Victoria.
- 70.7 Nominees may only be nominated for one category of Director; that is, candidates may nominate for Regional Director or General Director but not for both at the same Annual General Meeting.

71. Appointment of Co-opted Directors

- 71.1 The Elected Directors may appoint the Co-opted Directors representing such organisations or public bodies or possessing such skills as the directors think fit. Such appointments may be made at the first meeting of the directors held after the immediately preceding annual general meeting or at any later meeting of the Board.

72. Directors' terms

- 72.1 Elected and co-opted Directors hold office until the termination of the third annual general meeting that is held after his or her appointment (this period constitutes a **Term**).
- 72.2 A director may not serve more than three consecutive Terms, with the exception of any Director who serves a minimum of one year in the role of Chair, in which case this Director may serve four consecutive terms.
- 72.3 If a person has served three consecutive Terms, they will be eligible to be appointed for further Terms only if they have not been a director of the Company for at least three years.
- 72.4 A director may not appoint an alternate director to act in his or her place as a director.

73. Time appointment or retirement takes effect

- 73.1 Directors who are appointed at a meeting of members take office immediately after the end of the meeting.
- 73.2 Directors who retire at a meeting of members continue to hold office until the end of the meeting.

74. Office bearers

74.1 The office bearers of the Company are:

- (1) the chairperson;
- (2) the deputy chairperson;
- (3) the treasurer; and
- (4) the secretary.

75. Election of office bearers at Board meeting

75.1 Office bearers are elected by the directors at the first meeting of the directors held after the immediately preceding annual general meeting and hold office until the end of the first meeting of the directors held after the next annual general meeting.

75.2 The directors present must appoint one of their number to act as chair of the meeting for the purpose of the election.

76. Eligibility and nomination

76.1 Except for the secretary, only directors may be office bearers. Any director is eligible for election to any office bearer position.

76.2 Each director standing for election as an office bearer must be proposed by another director.

76.3 If a director stands for election for more than one position as an office bearer separate nominations must be received in respect of each position.

76.4 A nomination may be:

- (1) in writing, received by the secretary not less than 24 hours prior to the Board meeting at which the election is to take place and signed by the candidate and the proposer; or
- (2) made orally at the meeting, provided that the candidate is present and consents to the nomination.

77. Election procedure – office bearers

77.1 The election of the office bearers is held in the order in which the positions are listed in rule 74.1.

77.2 If there is only one candidate for election to any office bearer position that person is declared elected to that position.

77.3 If there is more than one candidate for election to any office bearer position a ballot must be held

among the candidates. The candidate receiving the greatest number of votes cast in his or her favour is declared elected to that position.

- 77.4 In the case of an equality of votes in respect of any position a further ballot must be held immediately but if there is still an equality of votes the successful candidate must be determined by lot.
- 77.5 If a director is elected to a position as office bearer then his or her nomination, if any, for any other position must be treated as withdrawn before the election is held in respect of the other position or positions.
- 77.6 Subject to this rule 77, a ballot is conducted in the manner the directors determine.

Appointment of directors between AGMs

78. Casual vacancies and additional directors

- 78.1 The Company in general meeting may by Resolution and the directors may at any time appoint a person qualified to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed the number fixed in accordance with this constitution.
- 78.2 Any director appointed under rule 78.1 holds office until the termination of the next annual general meeting of the Company and is then eligible for re-election at that annual general meeting.
- 78.3 The first term of any director appointed under rule 78.1 is deemed to commence from the annual general meeting that follows his/her appointment.

79. Insufficient directors

- 79.1 In the event of a vacancy or vacancies in the office of a director, the remaining directors must ensure through effective appointments that their numbers don't fall below seven (7). If the number of directors falls below seven (7), they may act only for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or convening a general meeting of the Company.

Powers of directors

80. Validation of acts of directors and secretaries

- 80.1 An act done by a director or secretary of the Company is effective even if his or her appointment, or the continuance of his or her appointment is invalid because the Company, the director or secretary did not comply with this constitution or any provision of the Act.
- 80.2 Rule 80.1 does not deal with the question whether an effective act by a director or secretary:

- (1) binds the Company in its dealings with other people; or
- (2) makes the Company liable to another person.

80.3 Where a person whose office as director of the Company is vacated under a provision of the Act purports to do an act as a director of the Company, that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

81. General business management

- 81.1 The business of the Company (including approving and monitoring the annual budget of the Company) is to be managed by or under the direction of the directors.
- 81.2 The directors may exercise all the powers of the Company except any powers that the Act or this constitution requires the Company to exercise in general meeting.
- 81.3 A rule made or Resolution passed by the Company in general meeting does not invalidate any prior act of the directors which would have been valid if that rule or Resolution had not been made or passed.

82. Borrowing powers

- 82.1 Without limiting the generality of rule 81, but subject to rule 7, the directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

83. Appointment of attorney

- 83.1 The directors may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the directors), for the period and subject to the conditions they see fit.
- 83.2 A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the directors see fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

84. Negotiable instruments

- 84.1 Any two (2) directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 84.2 The directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

85. Delegation to Committee of Directors

- 85.1 The directors may delegate any of their powers to a committee of directors and revoke the delegation.
- 85.2 A committee must exercise the powers delegated to it in accordance with any directions of the directors. The exercise of the power by the committee is as effective as if the directors had exercised it.
- 85.3 The meetings and proceedings of any committee of directors are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.
- 85.4 Any act or thing done or suffered, or purporting to have been done or suffered, by a committee of directors is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any director of the committee.

86. Delegation generally

- 86.1 For managing any affairs of the Company in any specified locality the directors may:
- (1) establish any local committees, Boards or branches;
 - (2) appoint any members of the Company or any nominated representative of a corporate member to be a member of the local committee, Board or branch;
 - (3) appoint any managers or agents, fix their remuneration and delegate to them any of the powers vested in the directors; and
 - (4) authorise the members for the time being of the local committee, Board or branch to fill any vacancies on it and to act despite vacancies.
- 86.2 In the exercise of delegated powers, any committee formed (including a committee of directors and a local Board or branch) or person or persons appointed to the committee must conform to any regulations that may be imposed by the directors. The committee may be authorised to sub-delegate any of the powers vested in it.
- 86.3 A local committee, Board or branch may remove any person appointed under rule 86.1(3) and may revoke or vary the delegation but no person dealing in good faith and without notice of the revocation or variation is affected by it.

87. Conducting Committee of Directors

- 87.1 Any Resolution to be considered at a meeting of a committee of directors must be passed by a majority of the votes cast by directors present at the meeting.
- 87.2 Every member present at a meeting of a committee of directors (including the Chairperson) is entitled to one vote. The chair has a casting vote if necessary in addition to any vote he or she has as a director. The chair has discretion both as to whether or not to use the casting vote and as to the way in which it is used.

- 87.3 Any Resolution to be considered at a meeting of a committee of directors must be decided on a show of hands unless a poll is demanded.

Executive Director

88. Power to appoint

- 88.1 The directors may appoint any person, not being a director, to the position of Executive Director for the period and on the terms (including as to remuneration) the directors see fit.

89. Position on the Board

- 89.1 The Executive Director is not a member of the Board of the Company but may attend meetings of the directors except where the directors otherwise request.

90. Powers

- 90.1 The directors may, upon terms and conditions and with any restrictions they see fit, confer on an Executive Director any of the powers that the directors can exercise.
- 90.2 Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the directors.

91. Withdrawal of appointment or powers

- 91.1 The directors may revoke or vary:
- (1) an appointment; or
 - (2) any of the powers conferred on an executive officer.

92. Temporary appointments

- 92.1 If an executive officer becomes incapable of acting in that capacity the directors may appoint any other person, not being a director, to act temporarily as executive officer.

Removal and resignation of directors

93. Resignation of director

93.1 A director may resign as a director of the Company by giving a written notice of resignation to the Company at its registered office.

94. Vacation of office of director

94.1 In addition to any other circumstances in which the office of a director becomes vacant under the Act, the office of a director becomes vacant if the director:

- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (2) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (3) is not present at 3 consecutive meetings of directors without special leave of absence from the directors and the directors declare his or her seat to be vacant;
- (4) ceases to be qualified as a director under rule 69;
- (5) becomes disqualified from being a director under the Act or any order made by a competent court;
- (6) resigns from office in accordance with rule 93.

Directors' interests

95. Prohibition on being present or voting

95.1 Except where permitted by the Act a director who has a material personal interest in a matter that is being considered at a meeting of directors:

- (1) must not be counted in a quorum;
- (2) must not vote on the matter; and
- (3) must not be present while the matter is being considered at the meeting.

95.2 If a director who has a material personal interest in a matter that is being considered at a meeting of the directors is not prohibited by the Act from being present at the meeting and voting, the director may be present, be counted in the quorum and may be heard but may not vote on the matter.

95.3 A director who is interested in any matter may, despite that interest, witness the fixing of the seal to

any document evidencing or otherwise connected with that matter.

96. Director to disclose interests

96.1 A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company must, as soon as practicable after the relevant facts have come to the director's knowledge, declare the nature of the interest at a meeting of the directors or by written notice to the secretary of the Company.

96.2 A director who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as director must declare at a meeting of the directors of the Company or by written notice to the secretary of the Company the fact and the nature, character and extent of the conflict.

96.3 For the purposes of rules 96.1 and 96.2, a director's interest or any conflict must be disregarded if it arises from or relates solely to:

- (1) a guarantee to be given by the director (or by persons including the director or by a body corporate of which the director is a member or officer) in respect of a loan to the Company; or
- (2) the position of the director as a director of a related body corporate.

97. Effect of interest in contract

97.1 Subject to the Act, if a director has an interest in a contract or proposed contract with the Company (other than as a member), or a conflicting interest or duty in relation to any other matter being considered by the directors, and the director discloses the nature and extent of the interest or duty at a meeting of the directors or by written notice to the secretary of the Company:

- (1) the contract may be entered into; and
- (2) if the disclosure is made before the contract is entered into:
 - (a) the director may retain benefits under the contract even though the director has an interest in the contract;
 - (b) the Company cannot avoid the contract merely because of the existence of the interest; and
 - (c) the director is not disqualified from the office of director.

97.2 For the purposes of rule 97.1 **contract** includes an arrangement, dealing or other transaction.

98. Standing notice of interest

98.1 A director who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and whether or not the matter

relates to the affairs of the Company at the time the notice is given.

98.2 A notice under the above rule may be given:

- (1) at a directors' meeting (either orally or in writing); or
- (2) to the other directors individually in writing.

98.3 If the standing notice is given to the other directors individually in writing:

- (1) the notice is effective when it has been given to every director; and
- (2) the notice must be tabled at the next directors' meeting after it is given.

98.4 The director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

99. Other interests

99.1 Without limiting rule 96 or rule 97 a director may to the extent permitted by the Act:

- (1) hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of director;
- (2) be interested in any operation, undertaking or business undertaken or assisted by the Company or in which the Company is or may be interested.

100. Extension of meaning of "Company"

100.1 For the purposes of rules 96, 97 and 98 **Company** includes any subsidiary of the Company and any other Company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

101. Other directorships and shareholdings

101.1 A director of the Company may be or become a director, officer, employee or member of any Company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable for any remuneration or benefits received as a director, officer, employee or member of the other Company.

101.2 Subject to the Act:

- (1) the directors of the Company may exercise the voting power conferred by the shares or other interest held by the Company in another Company in favour of a Resolution appointing themselves or any of them as directors or other officers of the other Company;
- (2) any director of the Company may vote at a meeting of directors of the Company in favour of a

Resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other Company to appoint that director as a director or other officer of the other Company;

- (3) any director of the Company may be appointed as representative of the Company and may vote at a general meeting of the other Company in favour of a Resolution appointing that director as a director or other officer of the other Company; and
- (4) a director of the Company who is also a director of the other Company may vote as a director of the other Company in whatever manner he sees fit, including voting in favour of a Resolution appointing the director to any other office in the other Company and a Resolution appointing any other directors of the Company as directors or other officers of the other Company.

Directors' meetings

102. Circulating Resolutions

- 102.1 The directors may pass a resolution without a directors' meeting being held if at least 75% of all the directors entitled to vote on the resolution (except a director absent from Australia who has not left a facsimile number or other contact details acceptable to the directors, at which he or she may be given notice) sign a document containing a statement that they are in favour of the Resolution set out in the document.
- 102.2 Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.
- 102.3 The resolution is passed when the last director signs.
- 102.4 A facsimile addressed to or received by the Company and purporting to be signed or sent by a director for the purpose of this rule 102 must be treated as a document in writing signed by that director.

103. Meetings of directors

- 103.1 The directors must meet at least four times in each calendar year and attend the annual general meeting.
- 103.2 At least two directors' meetings must be conducted in person in each calendar year and not conducted as a technology meeting as described in rule 107.
- 103.3 The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they see fit.

104. Calling directors' meetings

- 104.1 A director may at any time, and a secretary must on the requisition of a director, call a meeting of the

directors.

105. Notice of meeting

- 105.1 Reasonable notice of every directors' meeting must be given to each director except that it is not necessary to give notice of a meeting of directors to any director who:
- (1) has been given special leave of absence; or
 - (2) is absent from Australia and has not left a facsimile number or other contact details acceptable to the directors at which he or she may be given notice.
- 105.2 Any notice of a meeting of directors may be given in writing or orally, and whether by facsimile, telephone, electronic mail or any other means of communication.

106. Waiver of notice

- 106.1 All Resolutions of the directors passed at a meeting where a quorum is present but where notice of meeting has not been given to each director, or any act carried out under any of the Resolutions, is as valid as if notice of meeting had been given to all directors if each director to whom notice was not given subsequently agrees to waive the notice.

107. Technology meeting of directors

- 107.1 A directors' meeting may be held using telephone or, if consented to by all directors, other technology. The consent may be a standing one. A director may only withdraw the consent within a reasonable period before the meeting.
- 107.2 If a directors' meeting is held using any technology and all the directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.
- 107.3 The following provisions apply to a technology meeting:
- (1) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part in the meeting; and
 - (2) at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.
- 107.4 If the secretary is not present at a technology meeting 1 of the directors present or another person nominated by them present at the meeting must take minutes of the meeting.
- 107.5 A director may not leave a technology meeting by disconnecting his or her link to the meeting unless that director has previously notified the chair of the meeting.
- 107.6 A director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that director has previously obtained the express consent

of the chair to leave the meeting.

108. Chairing directors' meetings

108.1 The chairperson is the chair of all meetings of the directors.

108.2 At a meeting of directors if:

- (1) no chairperson has been elected as provided by rule 77; or
- (2) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act; the vice-chairperson is the chair of the meeting, but if:
- (3) no deputy chairperson has been elected as provided by rule 77; or
- (4) the deputy chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act; the directors present must elect a director present to chair the meeting.

109. Quorum

109.1 The quorum for a directors' meeting is the majority of directors entitled to vote or a greater number determined by the directors. The quorum must be present at all times during the meeting.

109.2 If there is a statutory obligation to act within a particular time, the directors may by Resolution authorise such action in the absence of the quorum.

110. Passing of directors' Resolutions

110.1 A Resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the Resolution.

110.2 The chair has a casting vote if necessary in addition to any vote he or she has as a director. The chair has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.

Remuneration of directors

111. No directors' remuneration

111.1 With the exceptions noted at rule 7.2 no director may receive any remuneration for his or her services in his or her capacity as a director of the Company.

112. Directors' expenses

112.1 Rule 111 notwithstanding, the Company may pay the directors' travelling and other expenses that they properly incur:

- (1) in attending directors' meetings or any meetings of committees of directors;
- (2) in attending any general meetings of the Company; and
- (3) in connection with the Company's business.

113. Financial benefit

113.1 A director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the director or to any other related party of the director.

Company Secretary

114. Appointment of Company Secretary

114.1 The directors must, in accordance with the Act, appoint one or more Company Secretaries.

114.2 The directors may appoint a person as an acting Company Secretary or as a temporary substitute for a Company Secretary.

114.3 The Executive Officer of the Company is eligible to be appointed Company Secretary.

115. Terms of office of Company Secretary

115.1 A Company Secretary holds office on the terms and conditions (including as to remuneration) that the directors determine.

Indemnity and insurance

116. Indemnity

116.1 To the extent permitted by the Act, the Company indemnifies:

- (1) every person who is or has been an officer of the Company; and
- (2) where the Board of directors considers it appropriate to do so, any person who is or has been an

officer of a related body corporate of the Company; against all losses, liabilities, costs, charges and expenses incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be). This indemnity includes, without limitation:

- (3) a liability for negligence; and
- (4) a liability for reasonable legal costs on a solicitor client basis including in respect of civil or criminal proceedings except to the extent prohibited by section 199A(3) of the Corporations Act.

116.2 The indemnity does not extend to and is not an indemnity against any amount in respect of which the indemnity would otherwise be illegal, void or unenforceable or not permitted by law and does not operate in respect of any liability of the officer to the extent that liability is covered by insurance.

116.3 In accordance with section 199A of the Act, the Company must not indemnify a person against:

- (1) any of the following liabilities incurred as an officer of the Company:
 - (a) a liability owed to the Company or a related body corporate;
 - (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
 - (c) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or
- (2) legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:
 - (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 116.3(1);
 - (b) in defending or resisting criminal proceedings in which the person is found guilty;
 - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; or
 - (d) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

Rule 116.3(2)(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for a court order.

- (3) For the purposes of rule 116.3(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

116.4 An officer must:

- (1) give notice to the Company promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified by the Company;

- (2) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
- (3) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company;
- (4) allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Company, render all reasonable assistance and co-operation to the Company or its insurers in the conduct of any Claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
- (5) on request by the Company or its insurers, do everything necessary or desirable which the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and
- (6) notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.

116.5 In rule 116.4 **Claim** means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;
- (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
- (3) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in rule 116.5(1) or 116.5(2) may be initiated.

116.6 If an officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, and the officer may be indemnified under rule 116.1, the directors may, despite the interest (if any) of the directors or any of them, execute or cause to be executed a mortgage, charge or security over or affecting the whole or any part of the assets or undertaking of the Company by way of indemnity to secure the officer so becoming liable from any loss in respect of that liability.

117. Insurance

117.1 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:

- (1) conduct involving a wilful breach of duty in relation to the Company; or
- (2) a contravention of section 182 or 183 of the Act.

118. Director voting on contract of indemnity or insurance

118.1 Despite anything in this constitution, a director is not precluded from voting in respect of any contract or proposed contract of indemnity or insurance, merely because the contract indemnifies or insures or would indemnify or insure the director against a liability incurred by the director as an officer of the Company or of a related body corporate.

119. Liability

119.1 An officer of the Company is not liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

120. Meaning of “officer”

120.1 For the purposes of rules 116, 117, 118 and 119, **officer** means a director or secretary or a member of a local committee, Board or branch appointed under rule 86.1.

Winding up

121. Winding up

121.1 If upon the winding up or dissolution of the Company any property remains, after satisfaction of all its debts and liabilities, that property must not be paid to or distributed among the members of the Company but must be given or transferred to some other institution or institutions determined by the members of the Company at or before the time of dissolution.

121.2 If the members do not make the necessary determination under rule 121.1, the Company may apply to the Supreme Court to determine the institution or institutions.

121.3 No institution is eligible to receive property under this rule 121 unless:

- (1) it has objects similar to the objects of the Company;
- (2) its constitution prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under rules 5, 6 and 7 and this rule 121;
- (3) its income is exempt under the Tax Act; and
- (4) it qualifies within under subdivision 30-B, section 30-100, of the *Income Tax Assessment Act 1997* and listed on the Register of Cultural Organisations.

Minutes

122. Minutes to be kept

122.1 The directors must keep minute books in which they record within 1 month:

- (1) proceedings and Resolutions of meetings of the Company's members;
- (2) proceedings and Resolutions of directors' meetings (including meetings of a committee of directors);
- (3) Resolutions passed by members without a meeting; and
- (4) Resolutions passed by directors without a meeting.

122.2 The directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:

- (1) the chair of the meeting; or
- (2) the chair of the next meeting.

122.3 The directors must ensure that minutes of the passing of a Resolution without a meeting are signed by a director within a reasonable time after the Resolution is passed.

122.4 Without limiting rule 122.1 the directors must record in the minute books:

- (1) all appointments of officers;
- (2) the names of the directors present at all meetings of directors and the Company;
- (3) in the case of a technology meeting, the method by which the meeting was held;
- (4) all orders Resolutions and proceedings of general meetings and of meetings of the directors and of committees formed by the directors;
- (5) proxy votes exercisable and exercised in respect of each Resolution at a meeting; and
- (6) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest in a matter that relates to the affairs of the Company.

Inspection of records

123. Rights of inspection

- 123.1 The directors of the Company, or the Company by a Resolution passed at a general meeting, may authorise a member to inspect books of the Company.
- 123.2 A member other than a director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its members and for Resolution of members passed without meetings, except as provided by law or authorised by the directors or by the Company in general meeting.
- 123.3 Directors have the rights of inspection and access provided by section 198F of the Act.

124. Confidential information

- 124.1 Except as provided by the Act, no member (not being a director) is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

Accounts, audit and records

125. Accounts

- 125.1 The directors must cause proper accounting and other records to be kept in accordance with the Act.
- 125.2 The directors must distribute copies of every financial statement (including every document required by law to be attached to it) as required by the Act.

126. Audit

- 126.1 A registered Company auditor must be appointed.
- 126.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

Execution of documents

127. Common Seal

- 127.1 The Company may, but need not, have a common seal.

128. Use of Common Seal

- 128.1 If the Company has a common seal the directors must provide for its safe custody.
- 128.2 The common seal may not be fixed to any document except by the authority of a Resolution of the directors or of a committee of the directors duly authorised by the directors.
- 128.3 The Company executes a document with its common seal if the fixing of the seal is witnessed by:
- (1) two (2) directors of the Company;
 - (2) a director and a Company secretary of the Company; or
 - (3) a director and any other person authorised by the directors for that purpose.

129. Execution of documents without common seal

- 129.1 The Company may execute a document without using a common seal if the document is signed by:
- (1) two (2) directors of the Company; or
 - (2) a director and a Company secretary of the Company.

130. Execution of document as a deed

- 130.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rule 127 or rule 128.

131. Execution – general

- 131.1 The same person may not sign in the dual capacities of director and secretary.
- 131.2 A director may sign any document as director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.
- 131.3 Rules 127 and 128 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.

Notices

132. Notices other than notices of meeting

- 132.1 Any notice by the Company to a member may be given in the same way as a notice of meeting may be given under rule 37, and the time the notice is taken to be given is the same as provided in the case of a notice of meeting by rule 38.

Inadvertent omissions

133. Formalities omitted

- 133.1 If some formality required by this Constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any Resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the directors that the omission has directly prejudiced any member financially. The decision of the directors is final and binding on all members.

Alterations

134. Alterations

- 134.1 If the Company is approved as a deductible gift recipient by the Australian Taxation Office, the Register of Cultural Organisations and the Australian Taxation Office must be notified in writing of any alterations to this constitution.