

**Dated 9 June 2016**

## **Constitution**

**A public company limited by guarantee**

**the STUDIO Limited (ACN 609 499 550)**

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This constitution is dated 7 March 2016

## Constitution of the STUDIO Limited ACN 609 499 550

### 1. Interpretation

#### 1.1 This Constitution

- (a) This Constitution contains clauses setting out the manner in which the Members and Directors of the Company have agreed to conduct the internal administration of the Company.
- (b) This Constitution takes the place of the Replaceable Rules contained in the Corporations Act.

#### 1.2 Definitions

In this Constitution, unless the context otherwise requires:

**Accounting Standards** means:

- (a) the accounting standards required under the Corporations Act including the Approved Accounting Standards issued by the Australian Accounting Standards Board;
- (b) other mandatory professional reporting requirements issued by the joint accounting bodies including the Australian Accounting Standards issued either jointly by CPA Australia and the Institute of Chartered Accountants in Australia or by the Australian Accounting Research Foundation on behalf of CPA Australia and the Institute of Chartered Accountants in Australia; and
- (c) if no accounting standard applies under the Corporations Act or other mandatory professional reporting requirements, the principles set out in the Australian Statement of Accounting Concepts;

**ACNC** means the Australian Charities and Not-for-profit Commission;

**AGM** means an annual general meeting of the Company held in accordance with section 250N of the Corporations Act;

**Annual Information Statement** means the annual statement that registered charities must submit to the ACNC which contains information about a charity's operations for the reporting period;

**ASIC** means the Australian Securities and Investments Commission;

**Auditor** means the auditor for the time being of the Company;

**Board** means the Directors acting as the Company's board of Directors which, as at the date of formation of the Company, is comprised of:

- (a) Chantal Marie-Rose Abouchar;
- (b) Marguerite Frances Haertsch;
- (c) Andrew Kevin Hoppe; and
- (d) Bruce David Laurence Tulloch;

**Business Day** has the meaning given in the Corporations Act;

**Chair** means the person appointed to be the Chair of the Board or the Chair of meetings of Members (as applicable);

**Chief Executive Officer** means a Director appointed as Chief Executive Officer in accordance with clause 4.8;

**Commissioner** means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA 97;

**Committee** means a committee appointed by the Directors under clause 5.7;

**Company** means the STUDIO Limited ACN 609 499 550;

**Constitution** means this Constitution and any supplementary, substituted or amended Constitution in force from time to time;

**Corporations Act** means the *Corporations Act 2001* (Cth);

**Director** means a director of the Company from time to time;

**Entrance Fee** means the initial joining fee payable by Members and/or as determined by the Directors under clause 7.3;

**Guarantee** means the maximum amount each Member agrees to pay to the Company in accordance with clause 2.4;

**ITAA 97** means the *Income Tax Assessment Act 1997* (Cth);

**Member** means a person admitted as a member and registered in the Register of Members to the Company under clause 7.3, who as at the date of formation of the Company are:

- (a) Chantal Marie-Rose Abouchar;
- (b) Marguerite Frances Haertsch;
- (c) Andrew Kevin Hoppe; and
- (d) Bruce David Laurence Tulloch;

**Officer** means an officer of the Company within the meaning of the Corporations Act;

**Register of Members** means the register of members to be kept pursuant to section 169 of the Corporations Act;

**Replaceable Rules** means the provisions of the Corporations Act which but for the Constitution would apply under section 141 of the Corporations Act;

**Secretary** means any person formally and lawfully appointed as a secretary of the Company including any assistant or acting secretary or any substitute for the time being for the Secretary; and

**Subscription Payment** means the amount of \$100 or another amount as determined by the Directors under clause 7.3.

### 1.3 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (b) a reference to a **body** or **authority** which ceases to exist is a reference to a body or authority having substantially the same objects as the named body or authority;
- (c) a reference to a **clause** is a reference to a clause of this Constitution;
- (d) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this Constitution;
- (e) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (f) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (g) **including** and **includes** are not words of limitation;
- (h) the words **at any time** mean at any time and from time to time;
- (i) a word that is derived from a defined word has a corresponding meaning;
- (j) **monetary amounts** are expressed in Australian dollars;
- (k) the singular includes the plural and vice-versa; and
- (l) words importing one gender include all other genders.

#### **1.4 Application of Legislation**

- (a) Division 8 of Part 1.2 (other than section 109X) of the Corporations Act applies in relation to this Constitution.
- (b) Unless the context otherwise requires, an expression used in this Constitution that has a particular meaning in the Corporations Act has the same meaning as in the Constitution.
- (c) Subject to the Corporations Act, the Replaceable Rules contained in the Corporations Act do not apply to the Company.
- (d) This Constitution is subject to the Corporations Act and where there is any inconsistency between a clause of this Constitution and the Corporations Act, the Corporations Act prevails to the extent of the inconsistency.

## **2. Nature of the company**

### **2.1 Public Company limited by Guarantee**

The Company is a public company limited by guarantee.

### **2.2 Not-for-profit**

The Company is a not-for-profit entity and its activities are not to be carried on for profit or gain of the Members.

### 2.3 Limitation of Company

- (a) The Company does not have the power to apply, pay or transfer, whether directly or indirectly, any portion of the income and property of the Company for the benefit of, or to, a Member, other than in good faith and as provided in clauses 3.6 and 3.7.
- (b) The Company must not become a member of another corporation.

### 2.4 Guarantee of Members

If the Company is wound up:

- (a) while a Member is a Member; or
  - (b) within one (1) year after the Member ceases to be a Member,
- each such Member must contribute a maximum of \$10 to the Company for payment of:
- (c) the debts and liabilities of the Company;
  - (d) the costs, charges and expenses of any winding up; and
  - (e) the adjustment of the rights of Members among themselves.

### 2.5 Objects of the Company

The Company is established to be a charity with the principal purpose of promoting culture by:

- (a) promoting film, video, television, music and design and the advancement of the media, entertainment and creative industries, including by means of:
  - (i) fostering and building the community of entrepreneurship in Australia;
  - (ii) promoting a culture of innovation and entrepreneurship in Australia in film, video, television, music and design by assisting innovators to commercialise their ideas;
  - (iii) establishing co-working spaces for media-and-entertainment-tech and creative-tech start-ups;
  - (iv) conducting and publishing research into the processes used in the field of technology entrepreneurship;
  - (v) working to ensure that the interests of the media, entertainment and creative industries, are represented in relation to the public decision-making process;
  - (vi) providing a forum for all people engaged in the media, entertainment and creative industries (in particular where they are underpinned by technology) to discuss best practice and enhancing the future of technology entrepreneurship; and
- (b) promoting education in the technology, media, entertainment and creative industries, and their role in promoting film, video, television, music and design, by means of:
  - (i) formal and informal domain specific education and training programs including seminars and conferences, and professional communities for best practice and peer-to-peer support;

- (ii) partnerships with schools, universities, vocational training and other educational providers to develop education and training programs including internships and mentorship programs;
- (iii) partnerships with industry, business and government to develop vocational pathways; and
- (iv) applying publicly available research and producing and disseminating original research to foster innovation, entrepreneurship, start-up and new business activity in the technology, media, entertainment and creative industries.

## **2.6 Scope of powers of the Company**

The Company has the legal capacity and powers set out in section 124 of the Corporations Act, provided that its capacities and powers are exercised directly or indirectly in the furtherance of its objects.

## **3. Directors**

### **3.1 Number and residency of Directors**

- (a) The Company must have at least three (3) and not more than ten (10) Directors.
- (b) At least two (2) of the Directors must reside in Australia.

### **3.2 Company may appoint a Director**

Subject to section 201E of the Corporations Act, the Company may appoint a person as a Director by resolution passed in a general meeting.

### **3.3 Directors may appoint other Directors**

- (a) The Directors may appoint a person as a Director.
- (b) A person may be appointed as a Director in order to make up a quorum for a Directors' meeting even if the total number of Directors otherwise present is not enough to make up that quorum.
- (c) If a person is appointed under this clause as a Director, the Company must confirm the appointment by resolution at the Company's next AGM.
- (d) If the appointment is not confirmed, the person ceases to be a Director at the end of the AGM.

### **3.4 Non-eligibility of Auditor**

The Auditor is ineligible to be elected or appointed as a Director or alternate Director.

### **3.5 Period of appointment of Directors**

Each Director may hold office until they:

- (a) die;
- (b) vacate the office in accordance with clause 3.8; or
- (c) are removed in accordance with clause 3.9,

or until the term for which they are appointed or their election expires.

### **3.6 Remuneration of Directors**

- (a) The Directors are to be paid the remuneration that the Company determines by resolution.
- (b) The Company may pay a Director's travelling costs and other expenses that the Director properly incurs:
  - (i) in attending Directors' meetings or any meetings of committees of the Directors;
  - (ii) in attending any meeting of the Company; and
  - (iii) in connection with the Company's business.
- (c) Any amount payable to a Director under this clause must be in accordance with Chapter 2E of the Corporations Act.

### **3.7 Remuneration of Directors for extra services**

- (a) If the Company requests a Director to perform services in addition to those required by the Corporations Act, the Company may remunerate the Director in any manner the Company thinks fit.
- (b) Any remuneration paid as contemplated by clause 3.7(a) is in addition to remuneration paid under clause 3.6.

### **3.8 Director may resign**

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

### **3.9 Removal of Directors**

- (a) Subject to section 203D of the Corporations Act, the Company may, by resolution:
  - (i) remove a Director from office; and
  - (ii) appoint another person as a Director in the Director's place.
- (b) If a Director was appointed to represent the interests of particular Members, their removal under clause 3.9(a) has no effect until a replacement to represent the interests of those Members has been appointed.

### **3.10 Vacation of office of Director**

- (a) A Director must vacate office if the Director:
  - (i) ceases to be a Director or becomes prohibited from being a Director by virtue of any provision of the Corporations Act;
  - (ii) resigns their office by written notice to the Company;
  - (iii) is absent from meetings of the Directors for more than three (3) meetings without obtaining permission for such absence of the other Directors;
  - (iv) is directly or indirectly interested in any contract or proposed contract with the Company (other than as a Member) and fails to disclose details of that interest as required by clause 4.1; or

- (v) is removed from the office of Director by a resolution of the Company in accordance with clause 3.9.
- (b) Subject to clause 3.9(a), where there are only three (3) Directors, a Director must not vacate their office voluntarily unless they have appointed, prior to their vacation, another person to be a Director.

#### **4. Management of business by Directors**

##### **4.1 Material personal interest - Director's duty to disclose**

- (a) Unless an exception under section 191 of the Corporations Act applies, if a Director has a material personal interest in a matter that relates to the affairs of the Company, a Director must give the other Directors notice of the interest.
- (b) The notice required by clause 4.1(a) must:
  - (i) include details of:
    - (A) the nature and extent of the interest; and
    - (B) the relation of the interest to the affairs of the Company; and
  - (ii) be given at a Directors' meeting as soon as practicable after the Director becomes aware of their interest in the matter.

##### **4.2 Director may give standing notice about an interest**

A Director with a material personal interest in a matter that relates to the affairs of the Company may give standing notice of this ongoing interest in accordance with clause 4.1 and section 192 of the Corporations Act.

##### **4.3 Voting and completion of transactions in which a Director has a material personal interest**

A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless:

- (c) the interest does not need to be disclosed under section 191 of the Corporations Act; or
- (d) the Directors who do not have a material personal interest in the matter pass a resolution that:
  - (i) identifies the Director, the nature of their interest in the matter and its relation to the affairs of the Company; and
  - (ii) states that the Directors are satisfied that the interest should not disqualify the Director from voting or being present.

##### **4.4 Financial benefits to related parties**

The Company must not give a financial benefit to a related party of the Company unless it is

authorised in accordance with the Corporations Act.

#### **4.5 Powers of Directors**

- (a) Subject to the Corporations Act and to any provision of this Constitution, the business of the Company is to be managed by or under the direction of the Directors.
- (b) The Directors may exercise all of the powers of the Company except any powers that the Corporations Act or this Constitution requires the Company to exercise in a General Meeting.

#### **4.6 Duties of Directors**

The Directors must comply with their duties as Directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
- (b) to act in good faith in the best interests of the Company and to further the charitable purpose of the Company set out in clause 2.5;
- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 4.1;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

#### **4.7 Negotiable instruments**

- (a) Any two (2) Directors, or any one (1) Director and one (1) Secretary may sign, draw, accept, endorse or otherwise execute a negotiable instrument after receiving unanimous approval, by resolution of the Board, to do so.
- (b) The Board may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

#### **4.8 Chief Executive Officer**

- (a) The Board may appoint one (1) of themselves to the office of Chief Executive Officer of the Company for a period and on the terms (including as to remuneration) as the Board sees fit.
- (b) A person ceases to be Chief Executive Officer if they cease to be a Director.
- (c) The Board may confer on a Chief Executive Officer any of the powers that the Directors can exercise.
- (d) The Board may revoke or vary:
  - (i) the appointment of the Chief Executive Officer; or
  - (ii) any of the powers conferred on the Chief Executive Officer.

#### **4.9 Appointment of attorney for Company**

The Directors may by power of attorney appoint any company, firm, person or body of persons to be the attorney of the Company for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors under this Constitution.

#### **4.10 Accounting for profit**

Where a Director's interest is approved by a resolution of Directors in accordance with clause 4.3(d), no Director will be liable to account that interest to the Company for any profit arising from any office or place of profit or realised from any contract or arrangement by reason only of the Director holding that office or of the fiduciary relations so established.

### **5. Board meetings**

#### **5.1 Circulating resolutions**

- (a) The Board may pass a resolution without a Board meeting being held if all of the Directors 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.
- (b) 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.
- (c) The resolution is passed when the last Director signs.

#### **5.2 Calling Board meetings**

A Board meeting may be called by a Director giving reasonable notice individually to every other Director.

#### **5.3 Use of technology**

- (a) A Board meeting may be called or held using any technology consented to by the Directors.
- (b) Any consent may be a standing consent.
- (c) A Director may only withdraw their consent within a reasonable period before the meeting.

#### **5.4 Chairing Board meetings**

- (a) The Board must elect a Director to act as the Chair for their meetings.
- (b) The Board may determine the period for which the Director is to be the Chair.
- (c) The Board must elect a Director present to chair a meeting, or part of it, if:
  - (i) a Director has not already been elected to chair the meeting; or
  - (ii) a previously elected Chair is not available or declines to act as Chair for the meeting or part of it.
- (d) The Chair will perform such duties as may be prescribed from time to time by the Directors

and such duties as are necessary to fulfil the objectives of the Company.

### **5.5 Quorum at Board meetings**

Unless the Board determine otherwise, the quorum for a Board meeting is three (3) Directors and the quorum must be present at all times during the meeting.

### **5.6 Passing of Board resolutions**

- (a) A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- (b) The Chair has no casting vote in addition to any vote they have in their capacity as a Director.

### **5.7 Committee powers and meetings**

Pursuant to clause 4.5:

- (a) The Board may delegate any of their powers to a Committee of Directors and Officers, and may revoke any such delegation.
- (b) Any Committee must exercise the powers delegated to it in accordance with any directions of the Board.
- (c) The meeting and proceedings of any Committee consisting of two (2) or more Directors or Officers will be governed by the provisions of this Constitution regulating the meetings and proceedings of the Board in so far as they are applicable and are not superseded by any direction made by the Board under this clause.
- (d) If not formally appointed to a Committee, the Chair will be entitled to attend meetings of each Committee as an ex-officio member.
- (e) Vacancies in the membership of any Committee may be filled by appointments made in the same manner as provided in the case of the original appointments.
- (f) Each Committee may adopt rules for its own government not inconsistent with this Constitution or with rules adopted by the Board.

## **6. Secretary**

### **6.1 Appointment and residency of Secretary**

- (a) The Board must appoint a Secretary in accordance with the Corporations Act.
- (b) The Secretary must reside in Australia.

### **6.2 Terms and conditions of office**

A Secretary holds office on the terms and conditions that the Board thinks fit.

## 7. Members

### Part A Membership

#### 7.1 Number of Members

- (a) There must be at least one (1) Member.
- (b) The Board may set a limit on the maximum number of Members.

#### 7.2 Classes of Members

The Company will consist of:

- (a) Members; and
- (b) any other class of Members determined by the Board from time to time.

#### 7.3 Admission to membership

- (a) Every applicant for membership must:
  - (i) be an individual who:
    - (A) agrees to abide by this Constitution as amended from time to time; and
    - (B) meets any additional criteria established for membership in the Company as may be adopted by the Board and approved by the Members from time to time;
  - (ii) sign an application for membership in such form as may from time to time be prescribed by the Company; and
  - (iii) undertake, as a condition of admission, to pay to the Company such Entrance Fee and Subscription Payment, if any, as may from time to time be payable to the Company in accordance with this Constitution.
- (b) The Board may in their discretion recommend an applicant for admission as a Member.
- (c) Admission of a new Member requires the unanimous consent of the Board.
- (d) At the next Board meeting after the receipt of any application for membership, that application will be considered by the Board, who will determine upon the admission or rejection of the applicant. In no case will the Board be required to give any reason for the rejection of an applicant.
- (e) Upon consent of the Board by resolution, and payment of the Entrance Fee and first Subscription Payment, if any, the applicant will become a Member of the Company.
- (f) If the payment of the Entrance Fee and Subscription Payment is not made within two (2) calendar months after the date of the notice of the Board's acceptance of the application for membership, the Board may in its discretion cancel its acceptance of the application for membership of the Company.
- (g) The Entrance Fee and Subscription Payment (**fees**) payable by Members will be as prescribed from time to time at the discretion of the Board. The Board, in its absolute discretion, may determine from time to time that different fees will apply to different

categories of membership and/or that no fees will be determined for all or any categories of membership.

- (h) All Subscription Payments will become due and payable on 30 June every year.
- (i) The Board may, if hardship or other sufficient cause is shown, reduce or remit the Entrance Fee or Subscription Payment payable by a Member.
- (j) The Secretary must enter in the Register of Members the name of any person admitted as a Member.

#### **7.4 Address of Member**

- (a) Each Member must provide the Secretary with an address in Australia where the Company can send notices to that Member.
- (b) If a Member fails to provide an address in accordance with clause 7.4(a), the address of the Member is deemed to be the registered office of the Company.

### **Part B Cessation of Membership**

#### **7.5 Events leading to cessation**

A Member ceases to be a Member if they:

- (a) die;
- (b) resign in writing;
- (c) become of unsound mind or become liable to be dealt with in any way under the law relating to mental health;
- (d) are convicted of an indictable offence; or
- (e) fail to pay their Subscription Payment within two (2) months of the Subscription Payment becoming due and payable, unless the Board remits the Subscription Payment in accordance with clause 7.3(i).

#### **7.6 Effect of cessation**

A Member who ceases to be a Member continues to be liable for:

- (a) any Subscription and all arrears due and unpaid at the date of cessation;
- (b) all other moneys due by them to the Company; and
- (c) the Guarantee, if applicable.

### **8. Dispute resolution and powers of the Board in respect of a Member's conduct**

#### **8.1 Dispute resolution**

- (a) The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a Member or Director and:
  - (i) one (1) or more Members;

- (ii) one (1) or more Directors; or
  - (iii) the Company.
- (b) A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 8.2 until the disciplinary procedure is completed.
- (c) Those involved in the dispute must try to resolve it between themselves within fourteen (14) days of the dispute arising.
- (d) If those involved in the dispute do not resolve it under clause 8.1(c), they must within ten (10) days:
- (i) notify the Board about the dispute in writing;
  - (ii) agree or request that a mediator be appointed; and
  - (iii) attempt in good faith to settle the dispute by mediation.
- (e) The mediator must:
- (i) be chosen by agreement of those involved; or
  - (ii) where those involved do not agree:
    - (A) for disputes between Members, a person chosen by the Board; or
    - (B) for other disputes, a person chosen by either the Commissioner of the ACNC or the president of the law institute or society in the state or territory in which the Company has its registered office.
- (f) A mediator chosen by the Board under clause 8.1(e)(i):
- (i) may be a Member or former Member of the Company;
  - (ii) must not have a personal interest in the dispute; and
  - (iii) must not be biased towards or against anyone involved in the dispute.
- (g) When conducting the mediation, the mediator must:
- (i) allow those involved a reasonable chance to be heard;
  - (ii) allow those involved a reasonable chance to review any written statements;
  - (iii) ensure that those involved are given natural justice; and
  - (iv) not make a decision on the dispute.

## **8.2 Power of the Board in respect of a Member's conduct**

- (a) If any Member:
- (i) wilfully refuses or neglects to comply with the provisions of the Constitution; or
  - (ii) engages in any conduct which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the interests of the Company,
- the Board has the power to censure, fine, suspend or expel the Member from the Company

pursuant to a Directors' resolution.

- (b) At least one (1) week before the Board meeting at which a resolution under clause 8.2(a) is passed, the Company must provide the Member with:
  - (i) notice of the meeting;
  - (ii) the allegations against them;
  - (iii) the intended resolution; and
  - (iv) advice that the Member will have an opportunity, at the meeting and before the passing of the resolution, to give, orally or in writing, any explanation or defence they may think fit.
- (c) Any Member referred to in clause 8.2(a) may, by notice in writing lodged with the Secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Board, elect to have the question dealt with by the Company in a general meeting.
- (d) If an election is made under clause 8.2(c):
  - (i) a general meeting must be convened and the resolution considered; and
  - (ii) if the resolution is passed by a majority of two-thirds of those present and voting (such vote to be taken by ballot), the Member concerned will be dealt with accordingly.

## **9. Meetings of Members**

### **Part A Who may call meetings of Members**

#### **9.1 Calling of meetings of Members by a Director**

A Director may call a meeting of Members.

#### **9.2 Calling of meetings by Members**

Members with at least 20% of the votes that may be cast at a general meeting of the Company may call and arrange to hold a general meeting.

#### **9.3 Calling of general meetings by Directors when requested by Members**

The Directors must call and arrange to hold a general meeting on the request of Members with at least 20% of the votes that may be cast at a general meeting.

#### **9.4 Failure of Directors to call general meeting**

Members with more than 50% of the votes of all Members who make a request under clause 9.3 may call and arrange to hold a general meeting if the Directors do not do so within twenty-one (21) days after the request is given to the Company.

## **Part B How to call meetings of Members**

### **9.5 Amount of notice of meetings**

- (a) At least twenty-one (21) days' notice must be given of a meeting of Members.
- (b) Subject to clause 9.5(c), the Company may call on shorter notice:
  - (i) an AGM, if all of the Members entitled to attend and vote at the AGM agree beforehand; and
  - (ii) any other general meeting, if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (c) At least twenty-one (21) days' notice must be given of a meeting of Members at which a resolution will be moved to:
  - (i) remove a Director under clause 3.9;
  - (ii) appoint a Director in place of a Director removed under clause 3.9; or
  - (iii) remove an Auditor.

### **9.6 Notice of meetings of Members**

- (a) Written notice of the meeting of Members must be given individually to each Member entitled to vote at the meeting and to each Director.
- (b) Notice to joint Members must be given to the joint Member first named in the Register of Members.
- (c) The Company may give the notice of meeting to a Member:
  - (i) personally;
  - (ii) by sending it by post to the address of the Member in the Register of Members or the alternative address (if any) nominated by the Member; or
  - (iii) by sending it to the fax number or electronic address (if any) nominated by the Member.
- (d) A notice of meeting sent by post is taken to be given three (3) days after it is posted. A notice of meeting sent by fax or other electronic means is taken to be given on the Business Day after it is sent.

### **9.7 Auditor entitled to notice and other communication**

The Company must give its Auditor:

- (a) notice of 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.

### **9.8 Notice of adjourned meetings**

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

## **Part C Holding of meetings**

### **9.9 Time and place for meetings of Members**

A meeting of Members must be held at a reasonable time and place.

### **9.10 Technology**

The Company may hold a meeting of its Members at two (2) or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

### **9.11 Quorum**

- (a) The quorum for a meeting of Members is three (3) Members. The quorum must be present at all times during the meeting.
- (b) In determining whether a quorum is present:
  - (i) individuals attending as proxies are to be counted;
  - (ii) if a Member has appointed more than one (1) proxy or representative, only one (1) of them is to be counted; and
  - (iii) if an individual is attending both as a Member and as a proxy or representative, they are to be counted only once.
- (c) A meeting that does not have a quorum present within thirty (30) minutes after the time for the meeting set out in the notice of meeting is to be adjourned to a date, time and place as the Directors specify.
- (d) If the Directors do not specify one (1) or more of those requirements, the meeting is adjourned:
  - (i) if the date is not specified, to the same day of the week in the following week;
  - (ii) if the time is not specified, to the same time; or
  - (iii) if the place is not specified, to the same place.
- (e) If no quorum is present at the resumed meeting within thirty (30) minutes after the time for the meeting, the meeting is dissolved.

### **9.12 Chairing meetings of Members**

- (a) The Board must elect an individual to act as the Chair of meetings of the Members.
- (b) The Board at the meeting of Members must elect an individual present to chair the meeting (or part of it) if an individual has not already been elected by the Board to chair it or, having been elected, is not available or declines to act for the meeting (or part of it).
- (c) The Members present at a meeting of the Members must elect a Member present to act as the Chair of the meeting (or part of it) if:
  - (i) a Chair has not previously been elected by the Board to chair the meeting; or
  - (ii) a previously elected Chair is not available or declines to act as Chair for the meeting (or part of the meeting).

- (d) The Chair must adjourn the meeting if the Members present with a majority of votes at the meeting agree or direct that the Chair must do so.

### **9.13 Auditor's right to be heard at meetings of Members**

- (a) The Auditor is entitled to attend and be heard at meetings of Members.
- (b) The Auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the Auditor in their capacity as Auditor.
- (c) The Auditor is entitled to be heard even if:
  - (i) the Auditor retires at the meeting; or
  - (ii) the meeting passes a resolution to remove the Auditor from office.
- (d) The Auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.

## **Part D Proxies**

### **9.14 Proxies and representatives**

A Member who is entitled to attend and cast a vote at meetings of Members may appoint a proxy to attend and cast a vote at that meeting.

### **9.15 Instruments appointing proxy**

The instrument appointing a proxy must be in writing signed by the appointer or by the appointer's attorney properly authorised in writing.

### **9.16 Deposit of proxy with Company**

- (a) The instrument appointing a proxy, and the original power of attorney (if any) under which it is signed or certified, must be received by the Company at least forty-eight (48) hours before the time for holding the meeting by delivery to the Company's registered office.
- (b) An instrument appointing a proxy will only be valid for twelve (12) months from the date of its execution unless it states that it is valid for all meetings until revoked, except that any expired instrument may be used upon the recommencement of an adjourned meeting for which that instrument was originally intended.

### **9.17 Validity of vote given in accordance with proxy**

Unless the Company has received written notice of the matter before the start of the meeting at which a proxy or an attorney votes, a vote cast by the proxy or attorney will be valid even if, before the proxy or attorney voted:

- (a) the Member dies;
- (b) the Member is mentally incapacitated;
- (c) the Member revokes the proxy's or attorney's appointment; or
- (d) the Member revokes the authority under which the proxy was appointed by the third party.

**9.18 Form of proxy**

- (a) Every instrument of proxy must specify the Member's name and address, the Company's name, the proxy's name or the name of the office held by the proxy and the meetings at which the proxy may be used.
- (b) The instrument of proxy may be worded so that a proxy is directed to vote either for or against each of the resolutions to be proposed.
- (c) Any instrument of proxy deposited in accordance with this Constitution in which the name of the appointee is not specified will be deemed to be given in favour of the Chair of the meeting to which it relates.

**Part E Voting at meetings of Members****9.19 How many votes a Member has**

- (a) Subject to any rights or restrictions attached to any class of Member, at a meeting of Members each Member has one (1) vote on a show of hands and on a poll.
- (b) The Chair does not have a casting vote.

**9.20 Objections to Member's right to vote**

A challenge to a right to vote at a meeting of Members:

- (a) may only be made at the meeting; and
- (b) must be determined by the Chair whose decision is final.

**9.21 How voting is carried out**

- (a) A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded.
- (b) On a show of hands, a declaration by the Chair is conclusive evidence of the result.
- (c) Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

**9.22 Matters on which a poll may be demanded**

A poll may be demanded on any resolution other than resolutions concerning:

- (a) the election of the Chair; or
- (b) the adjournment of the meeting.

**9.23 When and how polls must be taken**

- (a) 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.
- (b) A poll on the election of a Chair or on the question of an adjournment must be taken immediately.

## **Part F AGMs**

### **9.24 Holding of AGM**

- (a) The Company must hold an AGM within eighteen (18) months after its registration.
- (b) The Company must hold an AGM at least once in each calendar year and within five (5) months after the end of its financial year.
- (c) An AGM must be held in addition to any other meetings held by the Company in a year.

### **9.25 Consideration of reports at AGM**

The Directors must make the following available at an AGM:

- (a) the annual financial report;
- (b) the Annual Information Statement;
- (c) the Chairman and CEO's report; and
- (d) the Auditor's report,

for the last financial year that ended before the AGM completed.

### **9.26 Business of the AGM**

The business of the AGM may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, Annual Information Statement, Chairman and CEO's report and Auditor's report;
- (b) the election of Directors;
- (c) the appointment of the Auditor; and
- (d) the fixing of the Auditor's remuneration.

### **9.27 Questions by Members of the Company**

The Chair of the AGM 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.

### **9.28 Questions by Members to Auditors**

If the Auditor or their representative is at the meeting, the Chair of an AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.

## **10. Directors' and Members' minutes**

### **10.1 Minutes**

- (a) The Company must keep minute books in which it records within one (1) month:
  - (i) proceedings and resolutions of Members' meetings;

- (ii) proceedings and resolutions of Directors' meetings, including committee meetings;
  - (iii) resolutions passed by Members without a meeting; and
  - (iv) resolutions passed by Directors without a meeting.
- (b) The Company must ensure that the minutes of a meeting are signed by the Chair of the meeting or the Chair of the next meeting within a reasonable time after the meeting.
  - (c) The Company must ensure that the minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

## **10.2 Members' access to minutes**

Members are not entitled to inspect the minutes of Board meetings unless required by law or authorised by the Board.

## **11. Registers**

- (a) In accordance with the Corporations Act, the Directors must set up and maintain:
  - (i) a Register of Members;
  - (ii) a register of charges; and
  - (iii) if the Company issues debentures, a register of debenture holders.
- (b) The register may be kept either in a bound or loose leaf book or on computer. If a register is kept on computer, its contents must be capable of being printed out in hard copy.

## **12. Accounts and audit**

### **12.1 Accounting records**

- (a) The Directors must ensure that accounting and other records are kept to correctly record and explain the transactions and financial position of the Company, to enable true and fair profit and loss accounts and balance sheets to be prepared and to permit preparation of any other documents required by the Corporations Act or this Constitution.
- (b) The records must be kept:
  - (i) in a manner that enables them to be conveniently and properly audited;
  - (ii) for seven years after the completion of the transactions or operations to which they relate; and
  - (iii) at the Company's registered office or at such other place as the Directors think fit.
- (c) The records must at all times be open to inspection by the Directors.

### **12.2 Accounts**

- (a) Each financial year, the Company must prepare a financial report and a Directors' report in accordance with the Corporations Act.
- (b) The financial report for each financial year must consist of:

- (i) the financial statements for the year;
  - (ii) the notes to the financial statements; and
  - (iii) the Directors' declaration about the statement and the notes.
- (c) The financial statements for the year will consist of:
- (i) a profit and loss statement for the previous financial year;
  - (ii) a balance sheet at the date to which the profit and loss statement is made up;
  - (iii) a statement of cashflows for the year; and
  - (iv) if required by the Accounting Standards, a consolidated profit and loss statement, balance sheet and statement of cash flows.
- (d) The notes to the financial statements must consist of:
- (i) disclosures required by the Corporations Regulations;
  - (ii) the notes required by the Accounting Standards (if any); and
  - (iii) if required, any other information necessary to give a true and fair view of the financial position and performance of the Company.
- (e) The Directors' declaration made pursuant to clause 12.2(b)(iii) is a declaration by the Directors:
- (i) that the financial statement, and the notes required by the Accounting Standards comply with the Accounting Standards;
  - (ii) that the financial statements and the attached notes give a true and fair view of the financial position and performance of the Company;
  - (iii) whether, in the Directors' opinion, there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable; and
  - (iv) whether, in the Directors' opinion, the financial statement and attached notes are in accordance with the Corporations Act.

### **12.3 Auditor**

The Company must appoint an auditor to audit the Company's financial statements in accordance with the Corporations Act.

## **13. Establishment and operation of a Gift Account**

### **13.1 Maintaining a Gift Fund**

If required to do so in order to facilitate the making of gifts from members of the public to the Company that are tax deductible, the Company must maintain for the principal purpose of the Company a fund which is to be listed on the Register of Cultural Organisations (**Gift Fund**):

- (a) to which gifts of money or property for that purpose are to be made;

- (b) to which any money received by the Company because of those gifts is to be credited;
- (c) that does not receive any other money or property; and
- (d) that is established and operated in Australia.

### **13.2 Limits on use of the Gift Fund**

- (a) Subject to clause 13.2(b), the Company must use the following only for the objects of the Company:
  - (i) gifts made to the Gift Fund; and
  - (ii) any money received because of those gifts.
- (b) Investment of monies and assets in the Gift Fund must be made in accordance with guidelines for public funds as specified by the Australian Taxation Office from time to time.
- (c) No monies or assets in the Gift Fund will be distributed to Members or office bearers of the Company, except as reimbursement of out-of-pocket expenses incurred on behalf of the Company for the purpose of the Gift Fund or proper remuneration for administrative services.

### **13.3 Administration of the of the Gift Fund**

- (a) The Gift 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 their obligations solely in regard to the cultural objectives of the Company.
- (b) The Company must comply with any rules that the Treasurer of the Commonwealth of Australia or the Minister for the Arts make from time to time to ensure that gifts made to the Gift Fund will only be used for the Company's principal purpose.
- (c) Once every six (6) months the Company must provide statistical information on the gifts made into the Gift Fund to the Department responsible for the administration of the Register of Cultural Organisations from time to time.

### **13.4 Receipts for gifts to the Gift Fund**

Receipts for gifts to the Gift Fund must state:

- (a) the name of the Gift Fund and that the receipt is for a gift made to the Gift Fund;
- (b) the Company's Australian Business Number; and
- (c) any other matter required to be included on the receipt in accordance with the requirements set out in the ITAA 97 from time to time.

### **13.5 Bank Account**

The Company must maintain a separate bank account for the Gift Fund, which is to be used and operated in accordance this clause 13.

### **13.6 Winding up or revocation of deductible gift recipient endorsement**

- (a) At the first occurrence of:

- (i) the winding up or dissolution of the Gift Fund; or
- (ii) the Company's deductible gift recipient endorsement being revoked (whether or not the Company is to be wound up),

and there remains (after satisfaction of all the Company's debts and liabilities) any surplus gift funds or property, such surplus gift funds or property must be transferred to another organisation:

- (iii) which is charitable at law;
- (iv) which has charitable objects similar to the objects of the Company;
- (v) which has rules which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company; and
- (vi) to which income tax deductible gifts can be made under Subdivision 30-B, section 30-100 of the ITAA 97,

as the Directors decide.

- (b) In the event that the Gift Fund is wound up in accordance with either clause 13.6(a)(i) or 13.6(a)(ii), surplus gift funds or property must not be distributed to a Member or former Member of the Company, unless that Member or former Member is a charity described in clause 13.6(a)(iii) to 13.6(a)(vi).

#### **14. By-laws**

- (a) The Directors may pass a resolution to make by-laws to give effect to this Constitution.
- (b) Members and Directors must comply with by-laws as if they were part of this Constitution.

#### **15. Indemnity**

##### **15.1 Indemnity**

- (a) Subject to Part 2D.2 of the Corporations Act, a person who is an Officer or Auditor of the Company is indemnified by the Company against any liability to another person (other than the Company) incurred in that person's capacity as an Officer unless the liability:
  - (i) arises out of conduct involving a lack of good faith; or
  - (ii) is for a pecuniary penalty order or composition order under Part 9.4B of the Corporations Act.
- (b) The Company will indemnify any other employee of the Company at the Directors' discretion.
- (c) The Company will indemnify an Officer against a liability for costs and expenses (including legal expenses on a full indemnity basis) incurred by the Officer:
  - (i) in defending proceedings, whether civil or criminal, in which:
    - (A) judgment is given in favour of the Officer; or
    - (B) the Officer is acquitted; or

- (ii) in connection with an application, in relation to proceedings under clause 15.1(c)(i), in which a court grants relief to the Officer under the Corporations Act,

subject only to an obligation on the Officer to repay to the Company the expenses advanced by the Company if:

- (iii) judgment is not given in the Officer's favour;
  - (iv) the Officer is not acquitted;
  - (v) a court subsequently determines that the indemnification is not permitted; or
  - (vi) the indemnification is not permitted by the Corporations Act.
- (d) For the purposes of this clause, the Company will have the burden of proving that the Officer to be indemnified is not entitled to the requested indemnification.
  - (e) The indemnification rights in this clause constitute a contract between the relevant parties seeking indemnification and the Company and will continue to have effect following the rescission or restrictive modification of the clause with respect to events occurring prior to the rescission or modification of the clause.

## 15.2 Payment of Costs

The Directors may, out of the funds of the Company, pay all costs, losses and expenses which any Officer may incur or become liable to pay by reason of any contract entered into or act or thing done by them in their capacity as an Officer or in any way in discharge of their duties.

## 15.3 Limit of indemnity

Subject to the provisions of the Corporations Act, an Officer of the Company will not be liable for:

- (a) the acts, receipts, neglect or defaults of any other Officer;
- (b) joining in any receipt or other act of conformity or for any loss or expense happening to the Company through:
  - (i) the insufficiency or deficiency of title to any property acquired by order of the Officers for or on behalf of the Company; or
  - (ii) the insufficiency or deficiency of any security in or upon which any of the moneys of the Company is invested at any time;
- (c) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects are deposited at any time;
- (d) any loss occasioned by any error of judgment or oversight on the Officer's part; or
- (e) any other loss, damage or misfortune which occurs in the execution of the duties of the Officer's office,

unless the loss, damage or misfortune occurred through the Officer's own dishonesty.

## 16. Contract of insurance

Except to the extent precluded by the Corporations Act, the Company may pay a premium for a contract insuring a person who is or has been an Officer, against:

- (a) any liability incurred by the Officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Corporations Act; or
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal and whatever their outcome.

## **17. Altering this Constitution**

### **17.1 Charitable purpose**

The Company must not pass a special resolution altering this Constitution if, as a result, the Company will cease to be a charity.

### **17.2 Notice to the Commissioner**

- (a) The Company must give written notice to the Commissioner if:
  - (i) a special resolution is passed materially altering clause 2.5; or
  - (ii) the Company ceases to be entitled to be endorsed as a tax concession charity or as a deductible gift recipient as a result of a change in its Constitution or activities or otherwise.
- (b) The notice must be given as soon as possible after the passing of the special resolution or the cessation.

## **18. 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 charity described in clause 19(a).

## **19. Distribution of surplus assets**

- (a) Subject to the Corporations Act and 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 charities:
  - (i) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 2.5; and
  - (ii) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company.
- (b) The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of the 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.