

# Constitution

**Australian Chamber Orchestra Pty Limited**

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# Australian Chamber Orchestra Pty Limited

A company limited by shares

## Constitution

### 1 Company's name

The name of the company is **Australian Chamber Orchestra Pty Limited**.

### 2 Company's objects

The company is established to pay and apply its income and property to or for, and otherwise promote, such objects and purposes which are public charitable purposes and which, as decided by the directors, encourage, promote and support the Australian Chamber Orchestra and its performing activities and other activities, including (but not limited to) the following objects and purposes:

- (a) the presentation of music by the Orchestra, its musicians and associated artists at the highest artistic standards:
  - (1) to as large and diverse a domestic and international audience as possible; and
  - (2) in various formats, collaborations, venues and locations;
- (b) the wide dissemination of:
  - (1) recordings and broadcasts of the Orchestra's performances in various existing and evolving forms of media including radio, television, film, digital video and audio, the internet and other forms of media not now known or invented in the future;
  - (2) scores comprising original compositions or arrangements for the Orchestra; and
  - (3) other musical and promotional material relating to the Orchestra;
- (c) the provision of artistic opportunities for the Orchestra and its musicians through collaborative and other relationships with musicians, artists, arts organisations, entrepreneurs, sponsors, businesses and institutions;
- (d) identification of, and consultation with Orchestra stakeholders, including the Orchestra's audiences, the company's staff, donors and sponsors, composers and collaborators, and music and arts professionals;
- (e) acquiring, borrowing and lending scores, parts, books, programs, recordings, instruments, memorabilia and other materials connected with the performance, display, recording or study of music, and establishing and maintaining a library relating to these matters;
- (f) promoting financial strength and security for the Orchestra through:
  - (1) fees earned for performance;
  - (2) the sale of tickets and subscriptions to performances and events;
  - (3) the sale of products relating to, and recordings of, the Orchestra; and

- (4) grants, donations, bequests and sponsorships;
- (g) preparing, reviewing and implementing strategic plans for the development and deployment of artistic and financial resources; and
- (h) by these means, advancing knowledge, appreciation and enjoyment of the Orchestra and music in general.

### **3 Company's powers**

For the purpose of carrying out the company's objects, the company may do any or all of the things described in the Schedule to this constitution.

### **4 Additional powers**

The company has the powers set out in the Law but only to the extent necessary or convenient to carry out, or incidental to carrying out, the company's objects.

### **5 Income and property**

- (a) The company's income and property must be applied solely towards promoting the company's objects.
- (b) No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, fee or otherwise, to any of the members or directors.
- (c) However, this clause 5 does not prohibit:
  - (1) payment approved by the directors for:
    - (A) out-of-pocket expenses incurred by a director in performing a duty as a director of the company; or
    - (B) a service rendered to the company by a director in a professional or technical capacity where:
      - (i) the provision of the service has the prior approval of the directors; and
      - (ii) the amount payable is not more than an amount which commercially would be reasonable payment for the service;
  - (2) payment approved by the directors for any other service rendered to the company by a director in a professional, technical or other capacity;
  - (3) payment:
    - (A) in good faith to any member for goods supplied in the ordinary and usual course of business;
    - (B) of reasonable and proper interest on money borrowed from a member; or

- (C) of reasonable and proper rent for premises let by any member to the company;
- (4) appointment of executive officers as directors pursuant to clause 14.3 of this constitution; or
- (5) payment of executive officers as directors pursuant to clause 14.4 of this constitution;
- (6) indemnification of, or payment of premiums on contracts of insurance for, any director to the extent permitted by law and this constitution.

## **6 Shares**

### **6.1 Share capital**

- (a) The capital of the company is divided into 100 ordinary shares.
- (b) All shares shall be \$1.00 each.

### **6.2 Dealing with shares**

Shares in the company may not be transferred or otherwise dealt with except as set out in this constitution.

## **7 Establishment and operation of Foundation Trust**

### **7.1 Foundation Trust**

- (a) The company must establish and maintain a fund for the purpose of receiving gifts of money or property to the company to further the company's objects.
- (b) The name of the fund is the Australian Chamber Orchestra Foundation Trust or such other name decided by the directors ("the Foundationn Trust").
- (c) The public will be invited to make gifts of money or property to the Foundation Trust to support the company's objects.

### **7.2 Use of Foundation Trust**

The company must ensure that:

- (a) the Foundation Trust does not receive any money or property other than money or property described in clause 8;
- (b) all money (including interest) derived from money or property in the Foundation Trust is credited to the Foundation Trust;
- (c) the Foundation Trust is only used to further the company's objects; and
- (d) a separate bank account is maintained for the Foundation Trust into which all money in the Foundation Trust will be paid.

### **7.3 Winding up**

- (a) At the first occurrence of:
  - (1) the winding up of the Foundation Trust; or

- (2) the company ceasing to be eligible for tax deductibility of donations, any surplus assets of the Foundation Trust must be transferred to a fund, authority or institution:
  - (3) which is charitable at law; and
  - (4) gifts to which can be deducted under subdivision 30-B, section 30-100 of the ITAA 97.
- (b) The identity of the fund, authority or institution must be decided by the directors.

## 7.4 Receipts

Receipts issued for gifts to the Foundation Trust must state:

- (a) the name and ABN of the company;
- (b) the name of the Foundation Trust;
- (c) the fact that the receipt is for a gift.

## 7.5 Administration

- (a) If a majority of the directors meets the requirements in paragraph (b), the directors may administer the Foundation Trust. The directors may delegate the administration of the Foundation Trust to a committee provided that a majority of the committee members meets the requirements in paragraph (b). The company must inform the Department of any change to the persons administering the Foundation Trust.
- (b) A majority of the persons administering the Foundation Trust must be residents of Australia and fall within one or more of the following categories:
  - (1) a judge or former judge or magistrate;
  - (2) a chancellor or vice-chancellor of an Australian university or senior academic appointed by a chancellor;
  - (3) a member of parliament;
  - (4) a barrister or solicitor, registered medical practitioner, member of the Institute of Chartered Accountants in Australia or of the Australian Society of Certified Practising Accountants, or other person belonging to a professional body which has a code of ethics and rules of conduct;
  - (5) a person officially charged with spiritual functions by a religious organisation;
  - (6) a justice of the peace;
  - (7) a commissioner for taking affidavits;
  - (8) a town, shire or city clerk or councillor;
  - (9) a person who has received formal recognition from government for services to the community;
  - (10) a person known to a broad section of the community because he or she performs a public function or holds or held a public position;

- (11) a trustee or board member of a non-profit school or college;
- (12) a director or senior executive of a public listed company on the Australian Stock Exchange Limited;
- (13) a teacher in a senior position such as head of a school; and
- (14) any other person whose appointment is approved by the Commissioner of Taxation or a Deputy Commissioner of Taxation.

## **8 Winding up**

- (a) If, on the winding up or dissolution of the company, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred to a fund, authority or institution:
  - (1) which is charitable at law; and
  - (2) whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in clause 5; and
  - (3) gifts to which can be deducted under subdivision 30-B, section 30-100 of the ITAA 97.
- (b) The identity of the fund, authority or institution referred to in clause 8(a) must be decided by the directors at or before the time of winding up or dissolution of the company.

## **9 Government notification and approvals**

- (a) A special resolution making a material alteration to, or materially affecting, clauses 2, 5, 8, 9 or 10, except an alteration necessary to enable the company to comply with the fund-raising or collections legislation of any state or territory of Australia, has no effect unless approved in writing by a Deputy Commissioner of Taxation and the Department.
- (b) The company must comply with any rules that the Treasurer and the Minister of the Department make to ensure that gifts made to the fund are only used for its objects.
- (c) The company must give the Department statistical and other information required by the Department within the timeframes requested by the Department.

## **10 Membership**

- (a) Subject to this constitution, the members of the company are:
  - (1) (as and from the adoption of this Constitution in August 2001) the persons who are named, and whose signatures appear, at the foot of this constitution; and
  - (2) (subsequently) any applicant for membership who is admitted to membership in accordance with this constitution.



- (b) Every application for membership of the company must be at the invitation of the directors and every applicant must be proposed by another member. The application for membership must be:
  - (1) made in writing to the directors and signed by the applicant and the proposer; and
  - (2) in the form (if any) prescribed by the directors.
- (c) At the next meeting of the directors after the receipt of an application for membership, the directors must consider the application and decide whether to admit or reject the admission of the applicant. The directors need not give any reason for rejecting an application.
- (d) An applicant for membership who is admitted to membership in accordance with this constitution shall, on admission to membership, be issued with one share in the company.

## **11 When membership ceases**

### **11.1 Death, resignation and other events**

A person immediately ceases to be a member if the person:

- (a) dies;
- (b) resigns as a member by giving written notice to the company;
- (c) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;
- (d) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- (e) is expelled under clause 11.2; or
- (f) becomes, if the directors so decide in their absolute discretion, an untraceable member because the person has ceased to reside at, attend or otherwise communicate with his or her registered address.

### **11.2 Expulsion**

- (a) The directors may by resolution expel a member from the company if, in their absolute discretion, they decide it is not in the interests of the company for the person to remain a member.
- (b) If the directors intend to propose a resolution under clause 11.2(a), at least one week before the meeting at which the resolution is to be proposed, they must give the member written notice:
  - (1) stating the date, place and time of the meeting;
  - (2) setting out the intended resolution and the grounds on which it is based; and
  - (3) informing the member that he or she may attend the meeting and may give an oral or written explanation or submission before the resolution is put to the vote.

### 11.3 Power of attorney

- (a) Immediately on a person ceasing to be a member, the company is appointed as attorney for that person to do all things necessary to effect the transfer of that person's shareholding to:
  - (1) such other member; or
  - (2) such applicant for membership (subject to admission to membership);
 as the directors in their absolute discretion determine.
- (b) The directors shall do all things reasonably required to effect the transfer and to ensure that, except for the least possible period as a result of the cessation of membership, no member holds more than one share at any one time.

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## 12 General meetings

### 12.1 Calling general meetings

- (a) The directors may call and arrange to hold a general meeting whenever they think fit.
- (b) A general meeting may be called and arranged to be held only as provided by this clause 12.1 or as provided by sections 249D, 249E, 249F and 249G of the Law.
- (c) The directors may change the venue for, postpone or cancel a general meeting, unless the meeting is called and arranged to be held by the members or the court under the Law. If a general meeting is called and arranged to be held under section 249D of the Law, the directors may not:
  - (1) postpone it beyond the date by which section 249D requires it to be held; or
  - (2) cancel it without the consent of the requisitioning member.

### 12.2 Notice of general meetings

- (a) Notice of every general meeting must be given in any manner authorised by clause 18 to:
  - (1) every member, except a member who has not supplied the company with an address in Australia for giving notices; and
  - (2) the auditor.
 No other person is entitled to receive notice of general meetings.
- (b) A notice of a general meeting must:
  - (1) specify the date, time and place of the meeting; and
  - (2) except as provided by the Law, state the general nature of the business to be transacted at the meeting.
- (c) A person may waive notice of a general meeting by written notice to the company.

- (d) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this clause 12.2 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
  - (1) the non-receipt or failure occurred by accident or error; or
  - (2) before or after the meeting, the person:
    - (A) has waived or waives notice of that meeting under clause 12.2(c); or
    - (B) has notified or notifies the company of the person's agreement to that act, matter, thing or resolution by written notice to the company.
- (e) A person's attendance at a general meeting waives any objection that person may have to:
  - (1) a failure to give notice, or the giving of a defective notice, of the meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
  - (2) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

### **12.3 Quorum at general meetings**

- (a) No business may be transacted at a general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum consists of:
  - (1) if the members have fixed a number for the quorum, that number of members; and
  - (2) in any other case, 6 members,

present at the meeting in person, by proxy, by attorney or as representing a corporation.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
  - (1) where the meeting was convened on the requisition of members, the meeting must be dissolved; or
  - (2) in any other case:
    - (A) the meeting stands adjourned to the day, and at the time and place, that the directors decide or, if the directors do not make a decision, to the same day in the next week at the same time and place; and
    - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

## 12.4 Chairperson of general meetings

- (a) The chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each general meeting.
- (b) If at a general meeting:
  - (1) there is no chairperson of directors;
  - (2) the chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
  - (3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,
 the members present must elect as chairperson of the meeting:
  - (4) another director who is present and willing to act; or
  - (5) if no other director present at the meeting is willing to act, a member who is present and willing to act.

## 12.5 Conducting and adjourning general meetings

- (a) A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision is final.
- (b) The chairperson of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- (c) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (d) Except as provided by clause 12.5(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (e) Where a meeting is adjourned, the directors may change the venue of, or postpone or cancel, the adjourned meeting, unless the meeting was called and arranged to be held by the members or the court under the Law. If a meeting is called and arranged to be held under section 249D of the Law, the directors may not postpone it beyond the date by which section 249D requires it to be held and may not cancel it without the consent of the requisitioning member.

## 12.6 Decisions at general meetings

- (a) Except where by law a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting. Such a decision is for all purposes a decision of the members.
- (b) Where the votes on a proposed resolution are equal:
  - (1) the chairperson of the meeting does not have a second or casting vote; and

- (2) the proposed resolution is taken as lost.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless, before the vote is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:
  - (1) the chairperson of the meeting;
  - (2) at least 2 members present and with the right to vote on the resolution; or
  - (3) a member or members present at the meeting and representing at least 5% of the total voting rights of all the members entitled to vote on the resolution on a poll.
- (d) A demand for a poll does not prevent a general meeting continuing for the transaction of any business except the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it must be taken in such manner, and either at once or after an interval or adjournment or otherwise, as the chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn.

## **12.7 Voting rights**

- (a) Subject to this constitution, at a general meeting every member present in person or by proxy, attorney or representative has one vote and one vote only.
- (b) A proxy, attorney or representative is entitled to a separate vote for each member the person represents, in addition to any vote the person may have as a member in his or her own right.
- (c) An objection to the qualification of a person to vote at a general meeting must be:
  - (1) raised before or at the meeting at which the vote objected to is given or tendered; and
  - (2) referred to the chairperson of the meeting, whose decision is final.
- (d) A vote not disallowed by the chairperson of a meeting under clause 12.7(c) is valid for all purposes.

## **12.8 Representation at general meetings**

- (a) Subject to this constitution, each member at a meeting of members may vote:

- (1) in person or, where a member is a body corporate, by its representative;
  - (2) by proxy; or
  - (3) by attorney.
- (b)** A proxy, attorney or representative must be a member of the company.
- (c)** A proxy, attorney or representative may be appointed for:
  - (1) all general meetings;
  - (2) any number of general meetings; or
  - (3) a particular general meeting.
- (d)** Unless otherwise provided in the instrument, an instrument appointing a proxy, attorney or representative is taken to confer authority:
  - (1) to agree to a meeting being convened by shorter notice than is required by the Law or by this constitution;
  - (2) to speak to any proposed resolution on which the proxy, attorney or representative may vote;
  - (3) to demand or join in demanding a poll on any resolution on which the proxy, attorney or representative may vote;
  - (4) even though the instrument may refer to specific resolutions and may direct the proxy, attorney or representative how to vote on those resolutions:
    - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
    - (B) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
    - (C) to act generally at the meeting; and
  - (5) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (e)** An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution. Where an instrument contains such a direction, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (f)** Subject to clause 12.8(g), an instrument appointing a proxy or attorney need not be in any particular form as long as it is in writing, legally valid and signed by the appointer or the appointer's attorney.
- (g)** A proxy or attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is signed or a certified copy of the authority, are received in the places or at the fax numbers, and before the

times, specified for that purpose in the notice calling the meeting. In the notice:

- (1) the place may be the company's office or another place and a fax number may be the fax number at the company's office or another fax number; and
  - (2) the time may be before the time for holding the meeting or adjourned meeting.
- (h) The directors may waive all or any of the requirements of clauses 12.8(f) and (g) and in particular may, on production of any other evidence the directors require to prove the validity of the appointment of a proxy or attorney, accept:
- (1) an oral appointment of a proxy or attorney;
  - (2) an appointment of a proxy or attorney which is not signed or executed in the manner required by clause 12.8(f); or
  - (3) the deposit, tabling or production of a copy (including a copy sent by fax) of an instrument appointing a proxy or attorney, or of the power of attorney or other authority under which the instrument is signed.
- (i) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite the revocation of the instrument, or of the authority under which the instrument was executed, if the company has not received written notice of revocation by the time and at one of the places at which the instrument appointing the proxy or attorney is required to be received under clause 12.8(g).
- (j) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.

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## 13 Directorship

### 13.1 Appointing and removing directors

- (a) There must be:
  - (1) at least 7 directors; and
  - (2) subject to clause 13.1(b), not more than 20 directors.
- (b) The company may by resolution:
  - (1) increase or reduce the minimum or maximum number of directors; and
  - (2) appoint or remove a director.
- (c) The directors may appoint any individual as a director.
- (d) The total number of directors must not at any time exceed the maximum number allowed under this constitution.
- (e) A director must be a member in order to qualify for appointment.

- (f) Subject to clauses 13.2 to 13.5, a director holds office until he or she dies or is removed from office under clause 13.1(b)(2).

### **13.2 When office of director becomes vacant**

In addition to the circumstances prescribed by the Law, the office of a director becomes vacant if the director:

- (a) ceases to be a member of the company;
- (b) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (c) becomes bankrupt or insolvent or makes an arrangement or composition with his or her creditors;
- (d) is convicted on indictment of an offence and the directors do not within one month after that conviction resolve to confirm the director's appointment or election (as applicable) to the office of director; or
- (e) resigns as a director by giving written notice to the company.

### **13.3 Term of Appointment**

The term for which a director may be appointed is a term of one, two or three years commencing at the meeting at which the director is appointed.

### **13.4 Retirement of directors: (1)**

- (a) A director ("the retiring director") shall retire from office at the close of the first meeting of directors after the expiry of the term of years for which the retiring director was first appointed ("the First Retirement Meeting").
- (b) At the First Retirement Meeting, the directors must consider and decide:
  - (1) whether to reappoint the retiring director for a further term of years; and
  - (2) (if so) for what further term of one, two or three years.
- (c) If there is a decision at the First Retirement Meeting to reappoint the retiring director, the retiring director shall not retire from office in accordance with paragraph (a) but, subject to paragraphs (d) and (e):
  - (1) shall retire from office at the close of the first meeting of directors after the expiry of the further term of years for which the retiring director was reappointed ("the Second Retirement Meeting"); and
  - (2) on that retirement, shall not be eligible for further reappointment until the date which is 1 year from that retirement.
- (d) At the Second Retirement Meeting, the directors must consider and decide:
  - (1) whether to reappoint the retiring director for a further term of years; and
  - (2) (if so) for what further term of one, two or three years.
- (e) If there is a decision at the Second Retirement Meeting to reappoint the retiring director, the retiring director shall not retire from office in accordance with paragraph (c) but:



- (1) shall retire from office at the close of the first meeting of directors after the expiry of the further term of years for which the retiring director was reappointed (“the Third Retirement Meeting”); and
  - (2) on that retirement, shall not be eligible for further reappointment until the date which is 1 year from that retirement.
- (f) At the First Retirement Meeting and the Second Retirement Meeting, the directors may not consider and decide whether to reappoint a retiring director for a further term of years if the retiring director has advised the company prior to the relevant meeting that he or she does not wish to be considered for reappointment.
- (g) Notwithstanding anything to the contrary in this clause 13.4, the directors shall not reappoint a retiring director if to do so would mean that the aggregate term of the retiring director’s appointment would exceed eight years.

### **13.5 Retirement of directors: (2)**

- (a) Clause 13.4 is subject to the provisions of this clause 13.5.
- (b) At the Second Retirement Meeting the directors may, by a unanimity of secret votes cast by the directors present:
- (1) decide (despite anything to the contrary in clause 13.4(g)) to reappoint the retiring director for a further term of one, two, three or more years even if to do so would mean that the aggregate term of the retiring director’s appointment would exceed eight years; and
  - (2) decide (despite anything to the contrary in clause 13.4(e)(2)) that the retiring director shall be eligible at the Third Retirement Meeting for further reappointment.
- (c) If there is such a decision:
- (1) the retiring director shall retire from office at the close of the first meeting of directors after the expiry of the further term of years for which the retiring director was reappointed (“the Further Retirement Meeting”); and
  - (2) in relation to the retiring director, the Further Retirement Meeting shall be deemed to be a Second Retirement Meeting.

### **13.6 Power of attorney**

- (a) Immediately a director:
- (1) dies;
  - (2) is removed from office under clause 13.1(b)(2);
  - (3) vacates office under clause 13.2; or
  - (4) retires pursuant to clause 13.4 or clause 13.5;
- the company is appointed as attorney for that director to do all things necessary to effect the transfer of that director’s shareholding to such other director as the directors in their absolute discretion determine.

- (b) The directors shall do all things reasonably required to effect the transfer and to ensure that, except for the least possible period as a result of the cessation of directorship, no director holds more than one share at any one time.

### **13.7 Interested directors**

- (a) Subject to clause 5, a director may hold another position (except as auditor) in the company or any related body corporate in conjunction with his or her directorship and may be appointed to that position on terms as to remuneration, tenure and otherwise that the directors think fit.
- (b) A director:
  - (1) may be or become a director or other officer of, or otherwise interested in, any related body corporate or other body corporate promoted by the company or in which the company is interested as a shareholder or otherwise; and
  - (2) is not accountable to the company for any remuneration or other benefits he or she receives as a director or officer of, or from having an interest in, that body corporate.
- (c) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company in the manner in all respects that they think fit. A director may, if permitted by law, vote in favour of exercising those voting rights even though he or she is, or may be about to be appointed, a director or other officer of that other body corporate and, as such, interested in the exercise of those voting rights.
- (d) A director is not disqualified merely because he or she is a director from contracting with the company in any respect including, but not limited to:
  - (1) selling property to, or purchasing property from, the company;
  - (2) lending money to the company with or without interest or security;
  - (3) guaranteeing the repayment of money borrowed by the company for a commission or profit;
  - (4) underwriting or guaranteeing the subscription for securities in any related body corporate or other body corporate promoted by the company or in which the company is interested as a shareholder or otherwise, for a commission or profit; or
  - (5) being employed by the company or acting in any professional capacity (except as auditor) on behalf of the company.
- (e) A contract made by a director with the company and a contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is not avoided or rendered voidable merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (f) A director contracting with or being interested in any arrangement involving the company is not liable to account to the company for any profit realised by or under that contract or arrangement merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.

- (g) Subject to clause 13.7(h), a director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, despite that interest:
  - (1) be counted in deciding whether or not a quorum is present at a meeting of directors considering that contract or arrangement or proposed contract or arrangement;
  - (2) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement; and
  - (3) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement the company may execute.
- (h) Clause 13.7(g) does not apply if, and to the extent that, it would be contrary to the Law.
- (i) The directors may make regulations requiring the disclosure of interests that a director, and any person considered by the directors as related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this constitution bind all directors.

### **13.8 Powers and duties of directors**

- (a) The directors are responsible for managing the company's business and affairs and may exercise to the exclusion of the company in general meeting all the company's powers which are not required, by the Law or by this constitution, to be exercised by the company in general meeting.
- (b) Without limiting clause 13.8(a), the directors may exercise all the company's powers to:
  - (1) borrow or otherwise raise money;
  - (2) charge any property or business of the company; and
  - (3) issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- (c) The directors may decide how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed (as applicable) by or on behalf of the company.
- (d) The directors may pay out of the company's funds all expenses of the promotion, formation and registration of the company and the vesting in it of the assets acquired by it.
- (e) The directors may:
  - (1) appoint or employ a person to be an officer, agent or attorney of the company for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for the period and on the conditions they think fit;
  - (2) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and

- (3) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney at any time, with or without cause.
- (f) A power of attorney may contain any provisions for the protection and convenience of the attorney or persons dealing with the attorney that the directors think fit.

### **13.9 Proceedings of directors**

- (a) The directors may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the directors to constitute a quorum constitutes a meeting of the directors. All the provisions in this constitution relating to meetings of the directors apply, so far as they can and with any necessary changes, to meetings of the directors by telephone or other electronic means.
- (c) A director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the directors involved was at that place for the duration of the meeting.

### **13.10 Convening meetings of directors**

- (a) A director may convene a meeting of the directors whenever he or she thinks fit.
- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.

### **13.11 Notice of meetings of directors**

- (a) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice:
  - (1) a director, except a director on leave of absence approved by the directors; or
  - (2) an alternate director appointed under clause 13.16.
- (b) A notice of a meeting of directors:
  - (1) must specify the time and place of the meeting;
  - (2) need not state the nature of the business to be transacted at the meeting;
  - (3) may be given immediately before the meeting;
  - (4) may be given in person or by post, telephone, fax or other electronic means ; and
  - (5) is taken as given to an alternate director if it is given to the director who appointed that alternate director.

- (c) A director or alternate director may waive notice of a meeting of directors by notifying the company to that effect in person or by post, telephone, fax or other electronic means.
- (d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
  - (1) the non-receipt or failure occurred by accident or error;
  - (2) before or after the meeting, the director or an alternate director appointed by the director:
    - (A) has waived or waives notice of that meeting under clause 13.11(c); or
    - (B) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally or by post, telephone, fax or other electronic means; or
  - (3) the director or an alternate director appointed by the director attended the meeting.
- (e) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, an alternate director of a director on leave of absence approved by the directors does not invalidate any act, matter or thing done or resolution passed at the meeting if:
  - (1) the non-receipt or failure occurred by accident or error;
  - (2) before or after the meeting, the alternate director or the director who appointed the alternate director:
    - (A) has waived or waives notice of that meeting under clause 13.11((c)); or
    - (B) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally or by post, telephone, fax or other electronic means; or
  - (3) the alternate director or the director who appointed the alternate director attended the meeting.
- (f) Attendance by a person at a meeting of directors waives any objection which that person and:
  - (1) if the person is a director, an alternate director appointed by that person; or
  - (2) if the person is an alternate director, the director who appointed that person as alternate director,
 may have to a failure to give notice of the meeting.

### **13.12 Quorum at meetings of directors**

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) A quorum, at any particular time, consists of:
  - (1) 4 directors; or

- (2) not less than half of the then number of directors;  
(whichever is the greater) present at the meeting of directors.
- (c) If there is a vacancy in the office of a director then, subject to clause 13.12(d), the remaining directors may act.
- (d) If the number of directors in office at any time is not sufficient to constitute a quorum at a meeting of directors, or is less than the minimum number of directors fixed under this constitution, the remaining directors must act as soon as possible to:
  - (1) increase the number of directors to a number sufficient to constitute a quorum and to satisfy the minimum number of directors required under this constitution;
  - (2) convene a general meeting of the company for that purpose, or
  - (3) appoint additional directors,
 and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

### **13.13 Chairperson of directors**

- (a) The directors may elect one of the directors as chairperson of directors and may decide the period for which that director is to be the chairperson.
- (b) The chairperson of directors must (if present within 10 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each meeting of directors.
- (c) The directors may elect one of the directors as deputy chairperson of directors and may decide the period for which that director is to be the deputy chairperson.
- (d) The deputy chairperson of directors must (if present within 10 minutes after the time appointed for the meeting and willing to act) preside as deputy chairperson at each meeting of directors.
- (e) If at a meeting of directors:
  - (1) there is no chairperson of directors;
  - (2) the chairperson of directors is not present within 10 minutes after the time appointed for the meeting; or
  - (3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,
 the deputy chairperson (having been elected pursuant to (c)) shall act as chairperson of the meeting.

### **13.14 Decisions of directors**

- (a) A meeting of directors at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Subject to this constitution, at such a meeting every director has one vote and one vote only.

- (c) Questions arising at a meeting of directors must be decided by a majority of votes cast by the directors present. Such a decision is for all purposes a decision of the directors.
- (d) Where the votes on a proposed resolution are equal:
  - (1) the chairperson of the meeting does not have a second or casting vote; and
  - (2) the proposed resolution is taken as lost.

### 13.15 Written resolutions

- (a) If:
  - (1) a majority of the directors assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and
  - (2) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that act, matter, thing or resolution,

then that act, matter, thing or resolution is taken as done at or passed by a meeting of the directors.
- (b) For the purposes of clause 13.15(a):
  - (1) the meeting is taken as held:
    - (A) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to; or
    - (B) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to;
  - (2) 2 or more separate documents in identical terms, each of which is assented to by one or more directors, are taken as constituting one document; and
  - (3) a director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, telephone, fax or other electronic means.
- (c) Where a director signifies assent to a document otherwise than by signing the document, the director must as confirmation sign the document at the next meeting of the directors that director attends, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.

### 13.16 Alternate directors

- (a) A director may, with the approval of a majority of the directors, appoint a person as his or her alternate director for the period the director thinks fit.
- (b) An alternate director may, but need not, be a director or member of the company.
- (c) One person may act as alternate director to more than one director.

- (d) An alternate director may, if the appointer does not attend a meeting of directors, attend and vote in place of and on behalf of the appointer.
- (e) An alternate director is entitled to a separate vote for each director which the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- (f) In the absence of the appointer, an alternate director may exercise any power that the appointer may exercise. The exercise of such a power by the alternate director is taken to be the exercise of the power by the appointer.
- (g) The office of an alternate director is vacated if and when the appointer vacates office as a director.
- (h) The appointer may terminate the appointment of an alternate director at any time, even though the period of the appointment has not expired.
- (i) An appointment, or the termination of an appointment, of an alternate director must be in writing signed by the director who makes or made the appointment and does not take effect until the company has received written notice of the appointment or termination.
- (j) An alternate director is not to be taken into account in counting the minimum or maximum number of directors allowed under this constitution.
- (k) In deciding whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is to be counted as a director for each director on whose behalf the alternate director is attending the meeting.
- (l) An alternate director, while acting as a director, is:
  - (1) responsible to the company for his or her own acts and defaults; and
  - (2) not to be taken to be the agent of the director by whom he or she was appointed.

### **13.17 Committees of directors**

- (a) The directors may delegate any of their powers to one or more committees consisting of the number of directors they think fit.
- (b) A committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions given by the directors.
- (c) The provisions of this constitution that apply to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of directors.

### **13.18 Delegation to individual directors**

- (a) The directors may delegate any of their powers to one director.
- (b) A director to whom any powers have been delegated must exercise the powers delegated in accordance with any directions given by the directors.

### **13.19 Validity of acts**

An act done by a person acting as a director, a meeting of directors, or a committee of directors attended by a person acting as a director, is not invalidated merely because of:

- (a) a defect in the appointment of the person as a director;



- (b) the person being disqualified to be a director or having vacated office; or
  - (c) the person not being entitled to vote,
- if that circumstance was not known by the person, the directors or the committee (as applicable) when the act was done.

## **14 Executive officers**

### **14.1 Appointment of executive officers**

Without limiting clause 13.8(e), the directors:

- (a) may appoint or employ:
  - (1) an artistic director of the company;
  - (2) a general manager of the company;
- (b) must appoint a secretary.

### **14.2 Provisions that apply to executive officers**

- (a) A reference in this clause 14.2 to an executive officer is a reference to an artistic director, general manager or secretary appointed under clause 14.1.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions that the directors think fit.
- (c) Subject to any contract between the company and the relevant executive officer, an executive officer may be removed or dismissed by the directors at any time, with or without cause.
- (d) The directors may:
  - (1) confer on an executive officer the powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) they think fit;
  - (2) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
  - (3) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on him or her.
- (e) An executive officer need not be a member to qualify for appointment.
- (f) An act done by a person acting as an executive officer is not invalidated merely because of:
  - (1) a defect in the person's appointment as an executive officer; or
  - (2) the person being disqualified to be an executive officer,
 if that circumstance was not known by the person when the act was done.

### **14.3 Appointment of executive officers as directors**

- (a) Without limiting clause 13.1(c), but subject to clauses 13.1(d) and 13.1(e), the directors may appoint either or both of the artistic director and the general manager as a director of the company.
- (b) Without limiting clause 13.1(f):

- (1) if the artistic director is so appointed as a director of the company, he or she shall cease to be a director on ceasing to be artistic director; and
- (2) if the general manager is so appointed as a director of the company, he or she shall cease to be a director on ceasing to be general manager.

#### **14.4 Payments to executive officers as directors**

- (a) Nothing in clause 5 prohibits payment approved by the directors to the artistic director as a director of the company for a service rendered to the company by the artistic director in a professional or technical capacity, including a payment by way of bonus for performance to or in excess of performance goals.
- (b) Nothing in clause 5 prohibits payment approved by the directors to the general manager as a director of the company for a service rendered to the company by the general manager in a professional or technical capacity, including a payment by way of bonus for performance to or in excess of performance goals.

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## **15 Advisory councils or forums**

### **15.1 Establishment and termination**

- (a) The directors may:
  - (1) establish one or more advisory councils or fora; and
  - (2) appoint and remove, or make provision for the appointment and removal of, members of the advisory councils or fora.
- (b) Each advisory council or forum will consist of a single individual or the number of individuals that the directors decide.
- (c) The directors may terminate an advisory council or forum at any time.

### **15.2 Functions**

- (a) The functions of each advisory council or forum will be decided by the directors and, subject to any such decision, will be to recommend to the directors how payments or applications of income and capital should be made under clause 2.
- (b) The directors may specify:
  - (1) the manner in which proceedings of each advisory council or forum are to be conducted;
  - (2) the matters which the advisory council or forum must consider in carrying out its functions;
  - (3) the manner in which any recommendations of the advisory council or forum are to be made; and
  - (4) any other matters concerning the advisory council or forum or its functions that the directors decide.

## **16 Indemnity and insurance**

### **16.1 Persons to whom clauses 16.2 and 16.4 apply**

Clauses 16.2 and 16.4 apply to:

- (a) each person who is or has been a director, alternate director or executive officer (within the meaning of clause 14.2(a)) of the company; and
- (b) any other officers or former officers of the company or of its related bodies corporate that the directors decide in each case.

### **16.2 Indemnity**

The company must

- (a) indemnify; and
- (b) if requested by a person to whom this clause 16.2 applies, enter into a deed indemnifying,

on a full indemnity basis and to the full extent permitted by law, each person to whom this clause 16.2 applies for all losses or liabilities incurred by the person as an officer of the company or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

- (c) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (d) in connection with an application, in relation to those proceedings, in which the court grants relief to the person under the Law.

### **16.3 Extent of indemnity**

The indemnity in clause 16.2:

- (a) is a continuing obligation and is enforceable by a person to whom clause 16.2 applies even though that person has ceased to be an officer of the company or of a related body corporate; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

### **16.4 Insurance**

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this clause 16.4 applies against any liability incurred by the person as an officer of the company or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

### **16.5 Savings**

Nothing in clauses 16.2 or 16.4:

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
- (b) limits the capacity of the company to indemnify or provide insurance for any person to whom those clauses do not apply.

## 17 Auditor

The company must appoint a properly qualified auditor whose duties will be regulated in accordance with the Law.

## 18 Notices

### 18.1 How notices may be given

A notice may be given by the company to a member by:

- (a) delivering it to the member personally;
- (b) sending it to the member's fax number (if the member has nominated one to the company for receipt of notices); or
- (c) sending it to the member's email address (if the member has nominated one to the company for receipt of notices); or
- (d) posting it by prepaid post to the member's registered address.

### 18.2 When taken as given

A notice is taken as given by the company and received by the member:

- (a) if delivered, at the time of delivery;
- (b) if faxed, when the company receives a confirmation report that all pages of the fax have been transmitted to the member's fax number, but if transmission or receipt is after 5.00 pm, it is taken as received on the next business day; and
- (c) if emailed, when the company receives a confirmation report that the email has been transmitted to the member's email address, but if transmission or receipt is after 5.00 pm, it is taken as received on the next business day; and
- (d) if posted, on the second business day after it was posted.

### 18.3 When member has no registered address

If one or more members do not have a registered address in Australia, a notice addressed to the member or members and advertised in a daily national newspaper is taken to be duly given to the member or members at midday on the day on which the advertisement appears.

## 19 Definitions and interpretation

### 19.1 Definitions

In this constitution:

**auditor** means the auditor of the company;

**business day** means a day on which the major trading banks are open for business in Sydney, except a Saturday, Sunday or public holiday;

**company** means **Australian Chamber Orchestra**;

**Department** means the Federal Government Department responsible for the Register of Cultural Organisations;

**company's office** means the company's registered office;

**directors** means the company's board of directors;

**ITAA 97** means the *Income Tax Assessment Act 1997*;

**Law** means the Corporations Law;

**member** means a member of the company;

**registered address** means a member's address as notified to the company by the member and recorded in the company's records;

**secretary** means a person appointed to perform the duties of a secretary of the company and includes an honorary secretary; and

**State** means Victoria.

## 19.2 Interpretation

In this constitution unless the context requires otherwise:

- (a) references to notices include formal notices of meeting and all documents and other communications from the company to its members;
- (b) a reference to any legislation includes any amendment to that legislation, any consolidation or replacement of that legislation and any subordinate legislation made under it;
- (c) a reference to **writing** and **written** includes printing, lithography and other ways of representing or reproducing words in a visible form;
- (d) a word or expression defined in the Law has the same meaning unless it is defined differently; and
- (e) the singular (including defined terms) includes the plural and the plural includes the singular.

## 19.3 Headings

Headings are used for convenience only and do not affect the interpretation of this constitution.

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# 20 Application of the Law

## 20.1 What parts of the Law apply

- (a) Unless the contrary intention appears in this constitution:
  - (1) Division 8 of Part 1.2 (except sections 109S, 109X, 109Y, 109ZB(8)(b) and 109ZE(b)) of the Law applies, so far as it is capable of application and with any necessary changes, in relation to this constitution as if the provisions of this constitution were provisions of the Law; and

- (2) section 110C of the Law applies in relation to this constitution as if the provisions of this constitution were an instrument made under the Law.
- (b) An expression used in a particular part or division of the Law that is given by that part or division a special meaning for the purposes of that part or division has, in any of part this constitution that deals with a matter dealt with by that part or division, the same meaning as in that part or division, unless the contrary intention appears.

## **20.2 Replaceable rules displaced**

- (a) The provisions of this constitution displace each provision of a section or subsection of the Law that applies (or would apply but for this clause) to the company.
- (b) The replaceable rules do not apply to the company except those which operate as mandatory rules for public companies under the Law.

## Schedule

The company may:

- (c) raise funds and invite and receive contributions, grants, distributions of income or capital, gifts (by will or otherwise), loans and deposits from any person;
- (d) provide funds or other material benefits by way of grant or otherwise to further the company's objects;
- (e) accept and hold funds or property of any kind on or for any charitable objects or purposes specified or to be specified by any person or to be selected by the directors from a class of trusts, objects or purposes specified by any person;
- (f) accept and undertake full or partial trusteeship, administration and management of trusts and funds, whether as trustee or as agent for the trustee or otherwise, and charge and accept fees, commission or other remuneration in respect of the trusteeship, administration and management;
- (g) purchase, take on lease or in exchange, hire or otherwise acquire real or personal property, and any rights or privileges that are required for the purposes of, or capable of being conveniently used in connection with, the company's objects. However, if the company takes or holds any property which is subject to a trust, the company may only deal with that property in the manner allowed by law having regard to that trust;
- (h) control, manage, lease, exchange, mortgage, charge, sell, transfer, surrender, dispose of, develop, carry on business or otherwise deal with any real or personal property of any kind or any estate or interest in that property;
- (i) invest, deal with and lend money and otherwise provide financial accommodation to, and guarantee or otherwise secure loans to, charitable objects or purposes;
- (j) construct, improve, maintain, develop, work, manage and control real or personal property and enter into contracts and agreements;
- (k) appoint a person as the company's attorney or agent with the powers (including the power to sub-delegate) and on the terms the company thinks fit, and procure registration or recognition of the company in any other country or place;
- (l) enter into any arrangement with any government or authority that seems conducive to the company's objects, obtain from any government or authority any right, privilege or concession that the company thinks it desirable to obtain, and carry out, exercise and comply with any of those arrangements, rights, privileges and concessions;
- (m) engage, dismiss or suspend any employee, agent, contractor or professional person;
- (n) borrow, raise or secure the payment of money and secure the repayment or performance of any debt, liability, contract, guarantee or other engagement

in any way and, in particular, by mortgage, charge or overdraft or by the issue of debentures or debenture stock (perpetual or otherwise) charged on all or any of the company's property (both present and future) and purchase, redeem or pay off those securities;

- (o) spend money and do all other things that it considers desirable to promote the company's objects;
- (p) make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (q) print and publish newspapers, periodicals, books or leaflets or otherwise publish information in hard copy or by electronic means;
- (r) accept any gift of property, whether subject to any special trust or not, for the company's objects;
- (s) take any steps by personal or written appeals, public meetings or otherwise, that the company considers expedient to procure contributions to the company's funds, by way of donations, gifts (by will or otherwise), grants, sponsorships or otherwise;
- (t) appoint patrons of the company;
- (u) make donations for charitable purposes;
- (v) decline or otherwise refuse to accept any gift (by will or otherwise), donation, settlement or other disposition of money or property;
- (w) co-ordinate and arrange conferences, meetings, standing committees and commissions and other forums; and
- (x) do all other things that are incidental or conducive to attaining the company's objects.