

Constitution

Arts Council of Australia
trading as
Regional Arts Australia

ACN 000 525 182

(Company)

A Company Limited by Guarantee

Contents

1	Definitions and Interpretation	3
2	Objects of the Company.....	7
3	Powers.....	8
4	Application of income for objects only	8
5	Winding up	8
6	Regional Arts Australia Trust Fund.....	10
7	Membership.....	12
8	Ceasing to be a Member.....	14
9	General Meetings.....	15
10	Proceedings at General Meetings.....	17
11	Directors	21
12	Remuneration of Directors	23
13	Expenses of Directors	23
14	Vacation of office of Director.....	23
15	Powers and duties of Directors	24
16	Rules	25
17	Appointment of attorney	26
18	Conflicts of Interest	26
19	Proceedings of Directors.....	27
20	Chair and deputy chair of Directors	28
21	Alternate Director	29
22	Quorum for Directors' meeting.....	30

23	Committees	30
24	Circulating resolutions.....	31
25	Validity of acts of directors	31
26	Secretary	32
27	Dispute resolution.....	32
28	Execution of documents.....	33
29	Accounts.....	34
30	Seals.....	34
31	Inspection of records.....	34
32	Service of documents.....	35
33	Indemnity and insurance	36
34	Amendment to Constitution.....	37

1 Definitions and Interpretation

1.1 Definitions

In this Constitution unless a contrary intention appears:

Alternate Director means a person appointed as an alternate director under clause 21.1.

Annual General Meeting has the same meaning as the term ‘AGM’ in the Corporations Act.

ASIC means the Australian Securities and Investments Commission.

Auditor means the auditor for the time being of the Company.

Committee means a committee of Directors constituted under clause 23.

Company means Arts Council of Australia being an Australian public company limited by guarantee established under the Corporations Act which bears the ACN 000 525 182.

Constitution means this constitution as amended from time to time.

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

Director means an individual holding office as director of the Company.

Directors means some or all of the Directors acting as a board.

General Meeting means a meeting of the Members of the Company and includes an Annual General Meeting.

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

Insolvency Event occurs where:

- (a) an order is made or a resolution is passed by creditors for the winding up, dissolution or external administration of the Member;
- (b) the Member enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them; or
- (c) a controller, receiver, receiver and manager, official manager or other external administrator is appointed to the Member.

Member means a person entered on the Register of the Company as a member.

Regional Arts Organisation means an association, group, or body corporate that is registered or formed in a particular State or Territory of the Commonwealth of Australia that is acknowledged or recognised as initiating delivery of arts and/or community cultural development in regional areas, as determined by the Directors from time to time.

Register means the register of members under the Corporations Act and if appropriate includes a branch register.

Registered Office means the registered office for the time being of the Company.

Related Body Corporate has the same meaning it has in the Corporations Act.

Representative means an individual appointed to represent a Member at a General Meeting of the Company in accordance with the Corporations Act.

Rule means a rule made by the Directors in accordance with clause 16.

Seal means the common seal (if any) of the Company.

Secretary means an individual appointed as a secretary of the Company and includes an honorary Secretary and where appropriate includes an acting secretary and an individual appointed by the Directors to perform all or any of the duties of a secretary of the Company.

Special Resolution takes the meaning given by Section 9 of the Corporations Act.¹

1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a law includes regulations and instruments made under the law;
- (d) a reference to a clause is a reference to a clause in this Constitution unless otherwise stated;
- (e) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (f) a reference to a meeting includes a meeting by technology where all attendees have reasonable opportunity to participate;
- (g) a reference to a person being present in person includes a person participating at a meeting as described in clause 1.2(f);
- (h) a power, an authority or a discretion reposed in a Director, the Directors, the company in General Meeting or a Member may be exercised at any time and from time to time;
- (i) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and

¹ At the time of adoption of this Constitution, section 9 provides that a Special Resolution is a resolution:

- (a) of which notice has been given to the Members in accordance with clause 9.3; and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

- (j) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia.

1.3 Signing

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Directors.

1.4 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act;
- (b) “section” means a section of the Corporations Act; and
- (c) while the Company is a registered charity under the Australian Charities and Not-for-profits Commission Act 2012 (Cth):
 - (i) subject to 1.4(c)(ii), the provisions of the Corporations Act in Part 2G.2 and Part 2G.3 apply as if s 111L(1) of the Corporations Act was not enacted; and
 - (ii) where a particular provision of the Corporations Act referred to in s 111L(1) includes a reference to ASIC including a reference to lodge any document with, or seek consent or approval from ASIC, that particular provision does not apply to the Company to the extent that s 111(L) of the Corporations Act is in force.

1.5 Headings

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

1.6 Replaceable rules do not apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

2 Objects of the Company

The objects of the Company are:

- (a) To enable artistic expression and further the interests of regional Australian artists, arts organisations, audiences and communities.
- (b) To use all means available for achieving its objects and in particular, and without limitation:
 - (i) To develop, foster, advocate for and promote the practice, education and appreciation of the arts;
 - (ii) To represent the informed voice and national interests of regional artists, organisations and communities;
 - (iii) To organise nationally significant exhibitions, concerts, performances, lectures, seminars, conferences and festivals;
 - (iv) To undertake evidence based research and arrange for the publication of books, pamphlets, reports and journals;
 - (v) To promote co-operation amongst members in all matters affecting their common interests and to afford opportunities for such co-operation by means of meetings and conferences;
 - (vi) To give administrative, technical, managerial, artistic and other assistance and to provide (subject to such conditions and limitations as the Company may impose) financial support and assistance (whether direct or indirect) including, but not limited to, any gifts, loans, grants or sponsorship whatsoever to regional artists and arts organisation;
 - (vii) Generally to co-operate with kindred bodies throughout the world;
- (c) to act as trustee and to perform and discharge the duties and functions incidental thereto where this is incidental or conducive to the attainment of these objects; and
- (d) to do such other things as are incidental or conducive to the attainment of these objects.

3 Powers

The Company has the legal capacity and powers of an individual and also has all the powers of a body corporate under the Corporations Act.

4 Application of income for objects only

4.1 Application of income and property

The income and the property of the Company, however derived:

- (a) must be applied solely towards the promotion of the objects of the Company as set out in clause 2; and
- (b) may not be paid or transferred to the Members, in whole or in part, either directly or indirectly by way of dividend, bonus or otherwise.

4.2 Payment in good faith

The above clause does not prevent payment in good faith to a Member, or to a firm of which a Member is a partner:

- (a) of reasonable remuneration for services to the Company;
- (b) for goods supplied in the ordinary course of business;
- (c) of fair and reasonable interest on money borrowed from a Member at a rate not exceeding that fixed for the purposes of this clause by the Company in a General Meeting; or
- (d) of reasonable rent for premises let by a Member.

5 Winding up

5.1 Guarantee by Members

If the Company is wound up the amount that the Members or persons who have ceased to be Members within the preceding year, undertake to contribute to the Company's property is \$10 (ten dollars).

5.2 Application of property

- (a) If any property remains on the winding up or dissolution of the Company and after satisfaction of all its debts and liabilities, that property may not be paid to or distributed among the Members but must be given or transferred to some other institution:
 - (i) having objects similar to the objects of the Company; and
 - (ii) whose constitution prohibits the distribution of its income and property among its Members to an extent at least as great as imposed on the Company under this Constitution.
- (b) The institution will be determined by the Members at or before the time of dissolution.

5.3 Revocation of Australian Tax Office endorsement

- (a) Where the Company has been endorsed as a deductible gift recipient as an organisation or in relation to a public fund under Subdivision 30-BA of the Income Tax Assessment Act, then where:
 - (i) the Company is wound up;
 - (ii) the fund is wound up; or
 - (iii) the endorsement under Subdivision 30-BA of the Income Tax Assessment Act is revoked;

then any surplus assets of the Company or fund remaining after payment of all liabilities must be transferred to an institution or fund that complies with clause 5.2 and is an endorsed deductible gift recipient.

- (b) Where the Company operates more than one fund for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the Income Tax Assessment Act is revoked only in relation to one of those funds then it may transfer any surplus assets of that fund after payment of all liabilities to any other fund for which it is endorsed as a deductible gift recipient.

6 Regional Arts Australia Trust Fund

6.1 Introduction

- (a) Clause 6 is the rules of the Regional Arts Australia Trust Fund (**Rules**).
- (b) Fund Committee is defined at clause 6.2 (**Fund Committee**).
- (c) The Company maintains a public fund (**Regional Arts Australia Trust Fund or Fund**) listed on the Register of Cultural Organisations.
- (d) The Fund is established solely for the purpose of carrying out the objects of the company set out in clause 2.
- (e) The Fund shall be administered by the Fund Committee as follows:
 - (i) All gifts or distributions to the Fund shall be deposited into the Fund, which shall be kept in a bank account separate from other funds of the organisation;
 - (ii) The monies in the Fund will only be used to further the principle purpose of the Association;
 - (iii) The Fund Committee may refuse to accept any gift or distribution to the Fund, and shall not be required to give any reason for so doing;
 - (iv) No gifts or distributions other than gifts or distributions for one or more of the objects of the Fund shall be received by the Fund;
 - (v) Receipts shall be issued in the name of the Fund.
- (f) Any moneys in the Fund not immediately required may be invested in such a manner as may be permitted under any ruling or determination in relation to public funds issued by the Australian Taxation Office for the investment of such funds.

6.2 Fund Committee

- (a) The Fund Committee:
 - (i) Shall be made up of a majority of members which, because of their tenure of some public office or their professional standing, shall have an underlying community responsibility (as distinct from obligations solely in regard to the cultural objectives of the Company); and

- (ii) Shall meet at such times and places as they shall determine, as often as necessary to appropriately fulfil their responsibilities, but at least three times in each year.

6.3 Non-Profit

The income and property of the Fund, however derived, shall be applied exclusively towards the promotion of the objects of the Fund as set forth in these Rules and no portion of them shall be paid or distributed directly or indirectly by way of dividend, bonus or otherwise to members or officers of the Fund Committee except as reimbursement of out of pocket expenses incurred on behalf of the Fund, or payment in good faith of bona fide remuneration to any employee in return for services actually rendered to the Fund or for goods supplied in the ordinary and usual course of business as an arm's length transaction.

6.4 Fund Accounts

- (a) Proper accounts shall be kept by the Fund Committee of the sums of money received and expended by the Fund. For this purpose separate General Ledger revenue and expenditure accounts are to be established and maintained by the Fund Committee.
- (b) Accounts of the Fund shall be audited at the same time as the Company's accounts.
- (c) Receipts for gifts or distributions to the Fund must state:
 - (i) the name of the Fund and that the receipt is for a gift made to the Fund;
 - (ii) the ABN of the Company; and
 - (iii) any other matter required to be on the receipt pursuant to the requirements of the Income Tax Assessment Act.

6.5 Fund Dissolution Clause

- (a) If upon:
 - (i) the dissolution of the Fund; or
 - (ii) the Fund ceasing to be endorsed as a deductible gift recipient pursuant to the requirements of Section 30-F of the Income Tax Assessment Act;

there remains after satisfaction of all its debts and liabilities and the payment of all costs, charges and expenses of the dissolution, any property or funds, that property or funds

shall not be distributed among the members of the Fund Committee or organisation, but shall be transferred to some other fund or entity having objects similar to the objects of this Fund, and whose rules prohibit the distribution of income among its members, such fund or entity to be eligible for tax deductibility of donations and endorsed as a deductible gift recipient pursuant to the requirements of Section 30-B, section 30-100 of the Income Tax Assessment Act and listed on the Register of Cultural Organisations maintained under the Act.

6.6 Changes to the Fund Rules

The Company may from time to time amend these Rules, however such amendments shall not take effect unless the Department responsible for the administration of the Register of Cultural Organisations has been notified of the proposed amendments or alterations, and has advised that the Fund retains its endorsement as a Deductible Gift Recipient.

7 Membership

7.1 Number of Members

The minimum number of Members of the Company will be six (6) or such greater number as the Directors determine from time to time, subject to that number complying with the Corporations Act.

7.2 Members on Adoption

Members at the date of adoption of this Constitution are as follows:

- (a) Queensland Arts Council (ABN 31 009 726 827) trading as Artslink Queensland;
- (b) Regional Arts New South Wales Ltd (ABN 64 001 382 690);
- (c) Regional Arts Victoria (ABN 24 005 556 025);
- (d) Tasmanian Regional Arts Incorporated (ABN 34 018 079 587);
- (e) South Australian Country Arts Trust (ABN 63 908 129 329) trading as Country Arts SA;
- (f) Country Arts (WA) Inc (ABN 81 165 913 876).

7.3 Admission as a Member

The Directors may admit any person as a Member if the person is eligible under clause 7.4 and makes an application in accordance with clause 7.5.

7.4 Membership criteria

To be eligible to be a Member, a person must:

- (a) be a body corporate;
- (b) be a Regional Arts Organisation;
- (c) consent in writing to become a Member; and
- (d) agree to be bound by this Constitution.

7.5 Membership process

- (a) The application for membership must be made:
 - (i) in writing, signed by the applicant;
 - (ii) in such form as the Directors may from time to time prescribe; and
 - (iii) accompanied by the membership fee, if any, determined by the Directors.
- (b) Each application for membership must be considered by the Directors within a reasonable time after the application is made.
- (c) When an applicant has been accepted or rejected for membership the Secretary must immediately notify the applicant of the decision of the Directors.

7.6 Directors' discretion to admit or refuse admission as a Member

The Directors have the discretion to refuse any person admission as a Member without giving any reason for refusing.

7.7 Register

- (a) The company must establish and maintain a Register. The Register must be kept by the Secretary and must contain:
 - (i) for each current Member:

- (A) legal name;
 - (B) registered office address;
 - (C) any alternative address nominated by the Member for the service of notice;
and
 - (D) date the Member was entered on to the Register.
- (ii) for each person who stopped being a Member in the last 7 years:
- (A) name;
 - (B) address;
 - (C) any alternative address nominated by the Member for the service of notices;
and
 - (D) date the membership started and ended.
- (b) The Company must provide access to the Register in accordance with the Corporations Act.

8 Ceasing to be a Member

8.1 Cessation of membership

A Member ceases to be a Member on:

- (a) its ceasing to exist;
- (b) its failing to satisfy any of the membership criteria at clause 7.4;
- (c) resignation by written notice to the Company having immediate effect or with effect from a specified date occurring not more than seven days after the service of the notice;
- (d) failing to pay any fee that may be prescribed by the Directors from time to time within twelve months after the fee was due and payable;
- (e) immediately before the Member becoming subject to an Insolvency Event;
- (f) the passing of a resolution by the Directors or Members in General Meeting pursuant to clause 8.2;

8.2 Termination of membership

- (a) Subject to this Constitution, the Directors or Members in General Meeting may at any time terminate the membership of a Member if the Member:
 - (i) refuses or neglects to comply with this Constitution or any applicable Rules made by the Directors;
 - (ii) engages in conduct which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Company; or
 - (iii) fails to pay any debt due to the Company within a period of three months after the date for payment (such debt not including a fee referred to in clause 8.1(d)).
- (b) For a decision of the Directors or the Members in General Meeting under clause 8.2 to be effective the dispute resolution procedure contained in clause 27 must be followed. The general nature of the allegations made against the Member must be notified to the Member and for the purposes of clause 27.1(a) this notification will be the notice of the Dispute.

8.3 Limited liability

The Members have no liability as Members except as set out in clause 5.1.

9 General Meetings

9.1 Annual General Meetings

Annual General Meetings of the Company are to be held in accordance with the Corporations Act.

9.2 Convening a General Meeting

The Directors may convene and arrange to hold a General Meeting when they think fit and must do so if required to do so under the Corporations Act.

9.3 Notice of a General Meeting

- (a) Notice of a General Meeting must be given in accordance with the Corporations Act and served in accordance with clause 32.

- (b) A Director is entitled to receive notice of and to attend all General Meetings and is entitled to speak at those meetings.

9.4 Calculation of period of notice

In computing the period of notice under clause 9.3, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

9.5 Cancellation or postponement of General Meeting

- (a) Where a General Meeting is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.
- (b) This clause 9.5 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members or to a meeting convened by a Court.

9.6 Notice of cancellation or postponement of a meeting

Notice of cancellation, postponement or change of place of a General Meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a General Meeting under the Corporations Act.

9.7 Contents of notice of postponement of meeting

A notice of postponement of a General Meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

9.8 Number of clear days for postponement of meeting

The number of clear days from the giving of a notice postponing the holding of a General Meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the General Meeting required to be given under clause 9.3.

9.9 Business at postponed meeting

The only business that may be transacted at a General Meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

9.10 Non-receipt of notice

The non-receipt of notice of a General Meeting or cancellation or postponement of a General Meeting by, or the accidental omission to give notice of a General Meeting or cancellation or postponement of a General Meeting to, a person entitled to receive notice does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of a meeting.

10 Proceedings at General Meetings

10.1 Number of a quorum

- (a) A majority of Members, are a quorum at a General Meeting.
- (b) In determining whether a quorum is present, each Representative attending is to be counted, except that:
 - (i) where a Member has appointed more than one Representative, only one is to be counted; and
 - (ii) where an individual is attending as a Representative of more than one Member, that individual is to be counted only once.

10.2 Requirement for a quorum

- (a) An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it.

- (b) If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chair of the meeting (on the chair's own motion or at the request of a Member who is present) declares otherwise.

10.3 If quorum not present

If within fifteen minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened by a Director or at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

10.4 Adjourned meeting

At a meeting adjourned under clause 10.3(b), two Members present in person at the meeting are a quorum. If a quorum is not present within fifteen minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

10.5 Appointment and powers of chair of General Meeting

If the Directors have elected one of their number as chair of their meetings under clause 20.1, that person is also entitled to preside as chair at a General Meeting.

10.6 Absence of chair at General Meeting

If a General Meeting is held and:

- (a) a chair has not been elected by the Directors; or
- (b) the elected chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the following persons may preside as chair of the meeting (in order of precedence):

- (c) the deputy chair if a Director has been so elected by the Directors under clause 20.1; or
- (d) a Director or Member elected by the Members present in person to preside as chair of the meeting.

10.7 Conduct of General Meetings

- (a) The chair of a General Meeting:
 - (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
 - (ii) may require the adoption of any procedure which is, in the chair's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the General Meeting; and
 - (iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chair considers it necessary or desirable for the proper conduct of the meeting.
- (b) A decision by the chair under this clause is final.

10.8 Adjournment of General Meeting

- (a) The chair of a General Meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:
 - (i) in exercising the discretion to do so, the chair may, but need not, seek the approval of the Members present in person; and
 - (ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (b) Unless required by the chair, a vote may not be taken or demanded by the Members present in person in respect of any adjournment.

10.9 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

10.10 Questions decided by majority

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

10.11 Equality of votes – no casting vote for chair

If there is an equality of votes, either on a show of hands or on a poll, then the chair of the meeting is not entitled to a casting vote in addition to any votes to which the chair is entitled as a Member and consequently the resolution fails.

10.12 Voting on show of hands

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn.
- (b) A declaration by the chair that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minutes of the proceedings of the Company, is conclusive evidence of the fact.
- (c) Neither the chair nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

10.13 Poll

If a poll is demanded:

- (a) it must be taken in the manner and at the date and time directed by the chair and the result of the poll is the resolution of the meeting at which the poll was demanded;
- (b) on the election of a chair or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

10.14 Votes of Members

- (a) Every Member has one vote.
- (b) Subject to this Constitution:
 - (i) on a show of hands, each Member present has one vote; and

- (ii) on a poll, each Member present has one vote.

10.15 Validity of vote in certain circumstances

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a Representative, a vote cast by that person is valid even if, before the person votes the Member revokes the appointment or authority.

10.16 Objection to voting qualification

- (a) An objection to the right of a person to attend or vote at the meeting or adjourned meeting:
 - (i) may not be raised except at that meeting or adjourned meeting; and
 - (ii) must be referred to the chair of that meeting, whose decision is final.
- (b) A vote not disallowed under the objection is valid for all purposes.

11 Directors

11.1 Number of Directors

The number of Directors shall be such number between three (3) and nine (9) as the Directors may determine from time to time and subject to the provisions of the Corporations Act. In the absence of any such determination, the number of Directors will be made up as follows:

- (a) one (1) Director elected by the Members for each State of the Commonwealth of Australia (**Elected Director**); and
- (b) up to three (3) Directors appointed by the Directors (**Appointed Directors**); and
- (c) up to one (1) Director elected by the Members or appointed by the Directors for the Northern Territory.

11.2 Qualification of Directors

To be eligible for the office of Director a person must:

- (a) not be an employee of the Company or of a Member;
- (b) consent in writing to act as a Director; and

- (c) in the event that it is required under a law, regulation or guideline applicable to the Company², a majority of the Directors must be persons who have a degree of responsibility to the general public.

11.3 Process of appointment of Directors

- (a) Each Member may nominate up to three (3) people who are qualified under clause 11.2 to be a Director (**Nominees**).
- (b) All Members shall then elect one (1) Elected Director from amongst the Nominees of the Members of each State.
- (c) Where there is only one (1) Nominee from the Members of a particular State, that Nominee shall be the Elected Director for that State without the need for an election.
- (d) Where there are no Nominees from the Members of a particular State, or no Members from a particular State, the Directors shall receive an additional Appointed Director position until the next Annual General Meeting

11.4 Appointment of officers

At the next meeting of the Directors held following the Company's adoption of this Constitution, the Directors shall appoint the officers of the Company. Thereafter, the Directors shall appoint those officers with such frequency as the Directors from time to time determine.

11.5 Terms and retirement of Directors

- (a) Directors are elected for terms of three (3) years.
- (b) At each Annual General Meeting, any Director who has held office for three (3) years or more since last being appointed, must retire from office but subject to clause 11.6 is eligible for reappointment. A retiring Director holds office until the conclusion of the meeting at which that Director retires.

² Such as where the Company applies for endorsement of the Company or its public fund as a deductible gift recipient and this is a condition for such endorsement.

11.6 Reappointment of Directors

Directors are entitled to seek reappointment as Directors on one (1) occasion provided that a Director's period of service to the Company shall not exceed a period of six (6) years.

11.7 Casual vacancy or additional Director

- (a) The Directors may at any time appoint any person to be an Appointed Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number determined in accordance with clause 11.1.
- (b) A Director appointed under this clause holds office until the conclusion of the next Annual General Meeting of the Company but is eligible for election at that meeting.

12 Remuneration of Directors

The Directors must not be paid any remuneration for their services as Directors.

13 Expenses of Directors

- (a) A Director is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a committee of Directors or when otherwise engaged on the business of the Company.
- (b) Any payment to a Director must be approved by the Directors.

14 Vacation of office of Director

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) ceases to be eligible under clause 11.2;
- (b) resigns from the office by notice in writing to the Company;

- (c) is not present at three successive meetings of the Directors without leave of absence from the Directors;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (e) becomes insolvent or bankrupt, compounds with his creditors, or assigns his estate for the benefit of his creditors;
- (f) becomes prohibited for being a Director by reason of any order of any court of competent jurisdiction; or
- (g) dies.

15 Powers and duties of Directors

15.1 Directors to manage the Company

The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in General Meeting.

15.2 Specific powers of Directors

- (a) Without limiting the generality of clause 15.1, and subject to any trusts relating to the assets of the Company, the Directors may exercise all the powers of the Company to:
 - (i) borrow or raise money;
 - (ii) charge any property or business of the Company; and
 - (iii) give any security for a debt, liability or obligation of the Company or of any other person;
 - (iv) determine the relevant Regional Arts Organisation in each State or Territory of the Commonwealth of Australia as the Regional Arts Organisation in that State or Territory which initiates delivery of the arts and/or promotion of community cultural development.
- (b) In determining the Regional Arts Organisation preferred in clause 15.2(iv) the Directors shall have regard to, amongst other things, the following criteria:

- (i) the receipt of ongoing funding from State or Territory Government to the Regional Arts Organisation concerned for the delivery of the arts and/or promotion of community cultural development;
- (ii) the employment of professional staff by the Regional Arts Organisation which assists in the delivery of the arts and/or the promotion of community cultural development;
- (iii) that the operations of the Regional Arts Organisation are principally associated with the delivery of the arts and/or the promotion of community cultural development in rural, regional and remote areas within the respective State or Territory; and
- (iv) any other criteria that the Directors considers appropriate from time to time.

15.3 Delegation

- (a) The Directors may resolve to delegate any of their powers to:
 - (i) a committee in accordance with clause 23;
 - (ii) a Director;
 - (iii) an employee of the Company; or
 - (iv) any other person.
- (b) The power may be delegated for such time as determined by the Directors and the Directors may at any time revoke or vary the delegation.
- (c) The delegate must exercise the powers delegated in accordance with any directions of the Directors, and the exercise of the power by the delegate is as effective as if the Directors had exercised it.
- (d) The Directors may continue to exercise any power they have delegated.

16 Rules

Subject to this Constitution, the Directors may from time to time by resolution make and rescind or alter Rules which are binding on Members for the management and conduct of the business of the Company.

17 Appointment of attorney

- (a) The Directors may, by power of attorney, appoint any person to be the attorney of the Company for the purposes and with the powers, authorities and discretions held by the Directors for the period and subject to the conditions that they think fit.
- (b) A power of attorney granted under this clause 17 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

18 Conflicts of Interest

18.1 Disclosure of conflict of interest

A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):

- (a) to the Directors; or
- (b) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.

18.2 Disclosure recorded in minutes

The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

18.3 Material personal interest

Each Director who has a material personal interest in a matter that is being considered at a meeting of the Directors (or that is proposed in a circular resolution) must not, except as provided under clause 19:

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

18.4 Present and voting

A Director may still be present and vote if:

- (a) their interest arises because they are a Member of the Company and the other Members have the same interest;
- (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company (see clause 33.2);
- (c) their interest relates to a payment by the Company under clause 33.1 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
- (d) ASIC makes an order allowing the Director to vote on the matter; or
- (e) the Directors who do not have material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it related to the affairs of the Company; and
 - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

19 Proceedings of Directors

19.1 Directors' meetings

- (a) The Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

19.2 Questions decided by majority

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote, and that decision is for all purposes a decision of the Directors.

19.3 Alternate Director and voting

- (a) A person who is present at a meeting of Directors as an Alternate Director:

- (i) is entitled to participate and vote in the appointor's place if the appointor would have been entitled to vote and does not participate in that meeting; and
 - (ii) has one vote for each person for whom they have been appointed as Alternate Director.
- (b) If that person is also a Director, then that person also has one vote as a Director in that capacity.

20 Chair and deputy chair of Directors

20.1 Election of chair and deputy chair

The Directors shall elect from their number a chair and a deputy chair of their meetings and may also determine the period for which the persons elected as chair and deputy chair are to hold office.

20.2 Absence of chair at Directors' meeting

If a Directors' meeting is held and:

- (a) a chair has not been elected under clause 20.1; or
- (b) the chair is not present within ten minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the deputy chair, if elected under clause 20.1, must be the chair of the meeting or, if the deputy chair is not present, the Directors present must elect one of their number to be a chair of the meeting.

20.3 No casting vote for chair at Directors' meetings

In the event of an equality of votes cast for and against a question, the chair of the Directors' meeting does not have a second or casting vote, and consequently the question is decided in the negative.

21 Alternate Director

21.1 Appointment

- (a) Subject to the Corporations Act, a Director may appoint a person, with the approval of the Directors, to be an Alternate Director in the Director's place during such period as the Director thinks fit.
- (b) Subject to the Corporations Act, an appointment of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment, and delivered to the Company.

21.2 Notice

An Alternate Director is entitled to notice of all meetings of the Directors.

21.3 Alternate Director's powers

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

21.4 Alternate Director responsible for own acts and defaults

Whilst acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

21.5 Alternate Director and remuneration

An Alternate Director is not entitled to receive from the Company any remuneration or benefit.

21.6 Termination of appointment of Alternate Director

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period, if any, of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

21.7 Termination in writing

The termination of an appointment of an Alternate Director must be effected by a notice in writing signed by the Director who made the appointment and delivered to the Company.

21.8 Alternate Director and number of Directors

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

22 Quorum for Directors' meeting

- (a) At a meeting of Directors, the number of Directors whose presence in person is necessary to constitute a quorum is as determined by the Directors, and, unless so determined, is a majority of Directors holding office.
- (b) The Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by clause 11.1, the Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a General Meeting.

23 Committees

23.1 Delegation to committees

- (a) The Directors may delegate any of their powers, to a committee or committees consisting of such one or more of their number as they think fit.
- (b) A committee to which any powers have been delegated under this clause 23.1 must exercise those powers in accordance with any directions of the Directors. A power so exercised is taken to have been exercised by the Directors.

23.2 Committee of Regional Arts Organisations CEOs

- (a) A committee of the Chief Executive Officers (or the equivalent executive employee) of the Members of the Company is established, with powers delegated to it at the discretion of the Directors.

23.3 Meetings of Committee

A committee may meet and adjourn as it thinks proper.

23.4 Chair of Directors' committee

The members of a committee may elect one of their number as chair of their meetings. If a meeting of a committee is held and:

- (a) a chair has not been elected; or
- (b) the chair is not present within ten minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the committee members involved may elect one of their number to be chair of the meeting.

23.5 Determination of questions

- (a) Questions arising at a meeting of a committee are to be determined by a majority of votes of the members present and voting.
- (b) In the event of an equality of votes, the chair of the meeting does not have a casting vote.

24 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' 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.

25 Validity of acts of directors

All acts done at a meeting of the Directors or of a committee of Directors, or by a person acting as a Director are taken as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote.

26 Secretary

26.1 Appointment of Secretary

There must be at least one Secretary who is to be appointed by the Directors.

26.2 Suspension and removal of Secretary

The Directors may suspend or remove a Secretary from that office.

26.3 Powers, duties and authorities of Secretary

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Directors.

27 Dispute resolution

27.1 Handling a dispute

Where there is a dispute, grievance or other disagreement between a Member and the Company, whether arising out of the application of these rules or otherwise (**Dispute**), then either must, prior to the commencement of any proceedings in a Court or Tribunal or before any authority or board, notify the other in writing of the nature of the Dispute, and the following must occur:

- (a) the Member and the Company must in the period fourteen days from the service of the notice of the Dispute (**Initial Period**) use their best endeavours to resolve the Dispute;
- (b) if the Company and the Member are unable to resolve the Dispute within the Initial Period, then the Dispute must be referred for mediation to a mediator agreed by the Member and the Company;

- (c) if the disputants are unable to agree on a mediator within seven days of the Initial Period, the Member or the Company may request the President of LEADR³ to nominate a mediator to whom the dispute will be referred;
- (d) the costs of the mediation must be shared equally between the Member and the Company;
- (e) where:
 - (i) the party receiving the notice of the Dispute fails to attend the mediation required by clause 27.1(b);
 - (ii) the mediation has not occurred within six weeks of the date of the notice of the Dispute; or
 - (iii) the mediation fails to resolve the Dispute;then the party serving the notice of Dispute will be entitled to commence any proceedings in a Court or Tribunal or before any authority or board in respect of the Dispute; and
- (f) the procedure in this clause will not apply in respect of proceedings for urgent or interlocutory relief.

28 Execution of documents

Documents executed for and on behalf of the company must be executed by:

- (a) two Directors;
- (b) a Director and the Secretary; or
- (c) such other persons as the Directors by resolution appoint from time to time.

³ LEADR is a not-for-profit organisation facilitating dispute resolution – further information can be found at www.leadr.com.au.

29 Accounts

- (a) The Directors must cause proper financial records to be kept and if required by a law, regulation or guideline applicable to the Company or otherwise considered by the Directors to be appropriate, cause the accounts of the Company to be audited accordingly.
- (b) The Directors must distribute to the Members copies of the annual financial reports of the Company accompanied by a copy of the Auditor's report and Directors' report in accordance with the requirements of a relevant law, regulation or guideline.

30 Seals

30.1 Safe custody of common seals

The Directors must provide for the safe custody of any seal of the Company.

30.2 Use of common seal

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

31 Inspection of records

31.1 Inspection by Members

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to inspection by the Members (other than Directors).

31.2 Right of a Member to inspect

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in General Meeting.

32 Service of documents

32.1 Document includes notice

In this clause 32, a reference to a document includes a notice.

32.2 Methods of service

- (a) The Company may give a document to a Member:
 - (i) personally;
 - (ii) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
 - (iii) by sending it to an electronic address nominated by the Member.
- (b) A document sent by post:
 - (i) if sent to an address in Australia, may be sent by ordinary post and is taken to have been received on the day after the date of its posting; and
 - (ii) if sent to an address outside Australia, must be sent by airmail and is taken to have been received on the fifth day after the date of its posting.
- (c) If a document is sent by electronic transmission, delivery of the document is taken:
 - (i) to be effected by properly addressing and transmitting the electronic transmission; and
 - (ii) to have been delivered on the day following its transmission.

32.3 Evidence of service

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

33 Indemnity and insurance

33.1 Indemnity

The Company may indemnify any current or former Director, Secretary or executive officer of the Company or of a Related Body Corporate of the Company out of the property of the Company against:

- (a) every liability incurred by the person in that capacity; and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

except to the extent that:

- (c) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (d) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

33.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the Company or of a Related Body Corporate of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

33.3 Contract

The Company may enter into an agreement with a person referred to in clauses 33.1 and 33.2 with respect to the matters covered by these clauses. An agreement entered into pursuant to this clause may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

34 Amendment to Constitution

- (a) Subject to clause 34(c), this Constitution may only be amended by Special Resolution of the Members of the Company.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.
- (c) Any modification of this Constitution takes effect on the date the Special Resolution is passed or any later date specified, or provided for, in the resolution.