

Blue Mountains Artists Company

Constitution

Freehills

MLC Centre Martin Place Sydney New South Wales 2000 Australia Telephone +612 9225 5000 Facsimile +612 9322 4000
www.freehills.com DX 361 Sydney

SYDNEY MELBOURNE PERTH BRISBANE SINGAPORE
Correspondent Offices HANOI HO CHI MINH CITY JAKARTA KUALA LUMPUR

Reference PJSR:FLS:JVK:25E

Table of contents

<i>Rule</i>	<i>Page</i>
1 Company's name	4
2 Company's purposes	4
3 Company's powers	4
4 Income and property	5
5 Liability of members	6
6 Guarantee by members	6
7 Winding up	6
8 Altering this constitution or the activities	6
9 Inclusion on the Register of cultural organisations	6
9.1 Introduction	6
9.2 Ministerial rules	6
9.3 Statistical information	7
9.4 Notifying the Department	7
9.5 Establishment and operation of Public Fund	7
10 Membership	8
10.1 Application	8
11 When membership ceases	8
11.1 Death, resignation and other events	8
11.2 Expulsion	8
12 General meetings	9
12.1 Calling general meetings	9
12.2 Notice of general meetings	9
12.3 Quorum at general meetings	10
12.4 Chairperson of general meetings	10
12.5 Conducting and adjourning general meetings	10
12.6 Decisions at general meetings	11
12.7 Voting rights	11
12.8 Representation at general meetings	12
13 Directors	13
13.1 Appointing and removing directors	13

13.2	Vacation of office	14
13.3	Interested directors	14
13.4	Powers and duties of directors	15
13.5	Proceedings of directors	15
13.6	Convening meetings of directors	15
13.7	Notice of meetings of directors	15
13.8	Quorum at meetings of directors	16
13.9	Chairperson of directors	16
13.10	Decisions of directors	17
13.11	Written resolutions of directors	17
13.12	Minutes of meetings and minutes of resolutions	18
13.13	Committees of directors	18
13.14	Delegation to individual directors	18
13.15	Validity of acts	18
14	Executive officers	18
14.1	Executive director	18
14.2	Company secretary	18
14.3	Provisions that apply to all executive officers	19
15	Indemnity and insurance	19
15.1	Persons to whom the indemnity and insurance apply	19
15.2	Indemnity	19
15.3	Insurance	19
15.4	Savings	20
16	Auditor	20
17	Notices	20
17.1	Notices by the company to members	20
17.2	Notices by the company to directors	20
17.3	Notices by members or directors to the company	20
17.4	Time of service	20
17.5	Other communications and documents	21
17.6	Notices in writing	21
18	Definitions and interpretation	21
18.1	Definitions	21
18.2	Interpretation	21
18.3	Headings	22
19	Application of the Act	22
19.1	What parts of the Act apply	22
19.2	Replaceable rules displaced	22
20	Transitional provisions	22

Blue Mountains Artists Company

A company limited by guarantee

Constitution

1 Company's name

The name of the company is Blue Mountains Artists Company.

2 Company's purposes

The company's charitable purpose, as a not-for-profit organisation, is the promotion of all genres of arts in the Blue Mountains. In promoting this purpose the company will:

- (a) promote opportunities for its members to exhibit, perform, interact and exchange skills by serving as an information and support network; and
 - (b) project a positive image, regionally, nationally and internationally, of Blue Mountains art and culture through engaging in various promotional activities, workshops, exhibitions, performances, selling opportunities and partnerships with other entities and business organisations.
-

3 Company's powers

Solely for carrying out the company's purposes, the company may:

- (a) raise funds or encourage contributions by way of gifts (by will or otherwise), grants, sponsorships or otherwise, by personal or public appeals or by any other manner;
- (b) provide funds or other material benefits by way of grant or otherwise;
- (c) 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;
- (d) accept and undertake 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 for doing so;
- (e) purchase, take on lease or in exchange, hire or otherwise acquire real or personal property, and any rights or privileges;
- (f) 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;
- (g) invest, deal with and lend money and otherwise provide financial accommodation to, and guarantee or otherwise secure loans to, charitable objects or purposes;
- (h) construct, improve, maintain, develop, work, manage and control real or personal property;
- (i) enter into contracts and deeds;
- (j) appoint an 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;

- (k) enter into arrangements with any government or authority, and obtain from any government or authority any right, privilege or concession;
 - (l) engage, dismiss or suspend any employee, agent, contractor or professional person;
 - (m) 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;
 - (n) make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments;
 - (o) print and publish newspapers, periodicals, books or leaflets or otherwise publish information in hard copy or by electronic means;
 - (p) accept any gift of property, whether subject to any special trust or not;
 - (q) appoint patrons of the company;
 - (r) make donations for charitable purposes;
 - (s) decline or otherwise refuse to accept any gift (by will or otherwise), donation, settlement or other disposition of money or property;
 - (t) co-ordinate and arrange conferences, meetings, standing committees and commissions and other forums; and
 - (u) do all other things that are incidental or conducive to doing so.
-

4 Income and property

- (a) The company's income and property must be applied solely towards promoting the company's purposes.
 - (b) No part of the income or property (including the income or property in the Public Fund) may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, or other profit distribution, to any of the members or directors.
 - (c) No directors fees may be paid to the directors. All other payments to directors must be approved by the directors including, but not limited to:
 - (1) out-of-pocket expenses incurred by a director in performing a duty as a director of the company; or
 - (2) a service rendered to the company by a director in a professional or technical capacity or as an employee, other than in the capacity as a director of the company, where:
 - A the provision of the service has the prior approval of the directors; and
 - B the amount payable is not more than an amount which commercially would be reasonable payment for the service.
 - (d) This rule does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any director to the extent permitted by law and this constitution.
-

5 Liability of members

The liability of the members is limited to the amount of the guarantee given in rule 6.

6 Guarantee by members

Every member undertakes to contribute an amount not more than \$10 to the property of the company if it is wound up while the person is a member or within one year after the person ceases to be a member, for:

- (a) payment of the company's debts and liabilities contracted before the time he or she ceased to be a member; and
 - (b) the costs, charges and expenses of winding up.
-

7 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 an 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 rule 4; and
 - (3) which is on the Register.
 - (b) The identity of the institution referred to in rule 7(a) must be decided by the directors, or if the directors do not wish to decide or do not decide, it must be decided by the members by ordinary resolution at or before the time of winding up or dissolution of the company and, if the members cannot decide, by the Supreme Court of the State.
-

8 Altering this constitution or the activities

- (a) The company must not pass a special resolution making a material alteration to, or materially affecting, rules 2, 4 or 7, or any other alteration to the constitution, if, as a result, the company is no longer charitable.
 - (b) The company must notify the Department and the Commissioner if:
 - (1) a special resolution is passed materially altering rules 2 or 9; or
 - (2) the company is no longer eligible to be endorsed as charitable or as a deductible gift recipient under Subdivision 30-BA of ITAA 97, as a result of a change in its constitution or activities or otherwise.
-

9 Inclusion on the Register of cultural organisations

9.1 Introduction

If the company is on the Register it must comply with this rule 9.

9.2 Ministerial rules

The company must comply with any rules that the Treasurer of the Commonwealth of Australia and the Department make to ensure that gifts made to the Public Fund (established under rule 9.5) will only be used for the company's principal purposes as set out in rule O.

9.3 Statistical information

The company must provide to the Department:

- (a) within 21 days of the end of each six-monthly period January-June and July-December, information on tax deductible donations received;
- (b) statistical information and other information required by the Department within the time frame requested by the Department.

9.4 Notifying the Department

The company must notify the Department, as soon as practicable, of:

- (a) any changes to its contact details, directors or persons responsible for the Public Fund;
- (b) the selection process used to choose recipients of any grants, scholarships or prizes; and
- (c) the winding up of the company.

9.5 Establishment and operation of Public Fund

- (a) The company must establish and maintain for its principal purposes in Australia a fund to be called the Blue Mountains Artists Company Public Fund (or such other name as decided by the directors and notified to the Department) (**Public Fund**):
 - (1) to which gifts of money or property for those purposes are to be made;
 - (2) to which any money received by the company because of those gifts is to be credited; and
 - (3) that does not receive any other money or property.
- (b) The company must maintain for the Public Fund:
 - (1) a separate bank account; and
 - (2) proper accounting records.
- (c) The company must seek donations from the public to the Public Fund.
- (d) The company must use the following only for its principal purposes and the provisions of rule 4(b) apply to:
 - (1) gifts made to the Public Fund; and
 - (2) any money received because of those gifts.
- (e) The directors may administer the Public Fund if the majority of the directors are Responsible Persons. If there is not a majority of directors who are Responsible Persons the directors must delegate the power to administer the Public Fund to a sub-committee of not fewer than 3 people, a majority of whom are Responsible Persons.
- (f) The company must notify the Department, as soon as practicable, of any changes to its contact details, directors or persons responsible for the Public Fund
- (g) Receipts for gifts to the Public Fund must be made in the name of the Public Fund and state:
 - (1) the number of the receipt;
 - (2) the name and ABN of the company;
 - (3) the name of the Public Fund and a reference to it being on the Register;
 - (4) the name of the donor; and
 - (5) the type of gift, the amount of the gift, the fact that it was a gift and the date the gift was received,and include the signature of a person authorised to act on behalf of the Public Fund.
- (h) At the first occurrence of:

- (1) the winding up of the Public Fund; or
 - (2) the company ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of ITAA 97 or the company and the Public Fund ceasing to be on the Register,
- any surplus assets of the Public Fund must be transferred to a fund on the Register, the identity of which must be decided by the directors.
-

10 Membership

10.1 Application

- (a) The members are the members at the date of the adoption of this constitution, the directors and any other persons the directors admit to membership.
 - (b) Every applicant for membership of the company (except the initial members and the directors) must apply in the form and manner decided by the directors.
 - (c) The directors may decide to create eligibility criteria and categories of membership with the same or differing rights or privileges.
 - (d) After the receipt of an application for membership, the directors or delegate 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.
-

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) ceases to be a director;
- (d) 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;
- (e) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- (f) is expelled under rule 11.2;
- (g) has failed to pay that person's annual membership fee by the due date and such membership fee remains unpaid six months after that due date and the directors decide, in their absolute discretion, to withdraw the membership of the person; or
- (h) 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 rule 11.2(a), at least one week before the meeting of the directors 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.
-

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 rule or as provided by sections 249D, 249E, 249F and 249G of the Act.
- (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 Act. If a general meeting is called and arranged to be held under section 249D of the Act, 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 rule 17 to each person who is at the date of the notice:
 - (1) a member entitled to vote, except a member who has not supplied the company with an address in Australia for giving notices;
 - (2) a director; and
 - (3) the auditor.
- (b) A notice of a general meeting must:
 - (1) specify the date, time and place of the meeting;
 - (2) except as provided by the Act, state the general nature of the business to be transacted at the meeting; and
 - (3) specify a place and fax number or electronic address for the receipt of proxies.
- (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 rule 12.2 does not invalidate any 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 rule 12.2(c); or
 - B has notified or notifies the company of the person's agreement to that 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 there is only one member entitled to vote, that member; and
 - (2) in any other case, 5 members entitled to vote, unless the members have fixed a higher number of members entitled to vote,
 - (3) and present at the meeting.
- (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 contemporaneous linking together by telephone or other electronic means of a sufficient number of the members in person, to constitute a quorum constitutes a meeting of the members, provided each member has a reasonable opportunity to participate at the meeting.
- (c) All the provisions in this constitution relating to meetings of the members apply, so far as they can and with any necessary changes, to meetings of the members by telephone or other electronic means.
- (d) A member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (e) 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 members involved was at that place for the duration of the meeting.

- (f) 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.
- (g) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (h) Except as provided by rule 12.5(g), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (i) 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 Act. If a meeting is called and arranged to be held under section 249D of the Act, 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 two 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.
- (i) If the company has only one member, the company may pass a resolution by the member recording it and signing the record.

12.7 Voting rights

- (a) Subject to this constitution and to any rights or restrictions attached to any class of membership,

at a general meeting every member present has one vote.

- (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 rule 12.7(c) is valid for all purposes.

12.8 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
 - (1) in person or, where a member is a body corporate, by its representatives;
 - (2) by not more than 2 proxies; or
 - (3) by not more than 2 attorneys.
- (b) A proxy, attorney or representative may, but need not, be a member of the company.
- (c) A proxy, attorney or representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) Unless otherwise provided in the instrument, an instrument appointing a proxy, attorney or representative is to be taken to confer authority:
 - (1) to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution;
 - (2) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than the period of notice required by the Act has been given; and
 - (3) 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.
- (e) Where a member appoints 2 proxies or attorneys to vote at the same general meeting, the following rules apply:
 - (1) subject to rule 12.8(e)(2), the appointment is of no effect and a proxy or attorney may not vote unless each proxy or attorney (as applicable) is appointed to represent a specified

- proportion of the member's voting rights;
- (2) if the Act precludes the company from treating as invalid the appointment of 2 proxies which fails to specify the proportion or number of votes that each may exercise, each person appointed may exercise half the member's votes;
 - (3) on a show of hands, neither proxy or attorney may vote;
 - (4) on a poll, each proxy or attorney may only exercise the voting rights the proxy or attorney represents; and
 - (5) if both appointments cannot be validly exercised at the meeting, the later appointment revokes the earlier appointment of a proxy or attorney.
- (f) 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 and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (g) Subject to rule 12.8(h), 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 or on behalf of the appointor or the appointor's attorney.
- (h) 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:
- (1) received at the registered office of the company, a fax number at the company's registered office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting before the time specified in the notice;
 - (2) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (3) in the case of a poll, produced when the poll is taken.
- (i) The directors may waive all or any of the requirements of rules 12.8(g) and 12.8(h) and in particular may, on the production of such other evidence as the directors require to prove the validity of the appointment or 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 in the manner required by rule 12.8(g); and
 - (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.
- (j) 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 no written notice of the revocation has been received by the company by the time and at one of the places at which the instrument appointing the proxy or attorney is required to be deposited, tabled or produced under rule 12.8(h).
- (k) 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 person acting as proxy or attorney for the appointer is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.

13 Directors

13.1 Appointing and removing directors

- (a) Subject to rule 13.1(b), there must be:
 - (1) at least 3 directors; and
 - (2) not more than 10 directors.
- (b) The company may by resolution:
 - (1) increase or reduce the minimum or maximum number of directors; and
 - (2) appoint or, in accordance with section 203D of the Act, remove a director.
- (c) Subject to rule 13.1(a) and subject to the individual signing a consent to act as a director, the directors may appoint any individual as a director, either to fill a casual vacancy or as an addition to the existing directors.

13.2 Vacation of office

The office of a director becomes vacant:

- (a) in the circumstances prescribed by the Act;
- (b) if the director 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) if the director is removed from office under rule 13.1; or
- (d) if the director resigns by written notice to the company.

13.3 Interested directors

- (a) Subject to rule 4, 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.
- (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) Unless section 195 of the Act permits, a director who has a material personal interest in a matter that is being considered at a directors' meeting must not:
 - (1) be present while the matter is being considered at the meeting; or
 - (2) vote on the matter.
- (h) 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.

13.4 Powers and duties of directors

- (a) The directors are responsible for managing the company's affairs and carrying out the objects of the company. The directors may exercise to the exclusion of the company in general meeting all the company's powers which are not required, by the Act or by this constitution, to be exercised by the company in general meeting.
- (b) Without limiting rule 13.4(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.

13.5 Proceedings of directors

The directors may meet together and adjourn and otherwise regulate their meetings as they think fit.

13.6 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.

13.7 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 a director, except a director on leave of absence approved by the directors.

- (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; and
 - (4) may be given in person or by post, telephone, fax or other electronic means.
- (c) A 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 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:
 - A has waived or waives notice of that meeting under rule 13.7(c); or
 - B has notified or notifies the company of his or her agreement to that thing or resolution personally or by post, telephone, fax or other electronic means; or
 - (3) the director attended the meeting.
- (e) Attendance by a person at a meeting of directors waives any objection which that person may have to a failure to give notice of the meeting.

13.8 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 consists of:
 - (1) if the directors have fixed a number for the quorum greater than 3, that number of directors; and
 - (2) in any other case, 3 directors, present at the meeting of directors.
- (c) If there is a vacancy in the office of a director then, subject to rule 13.8(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.

13.9 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) 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 directors present must elect one of the directors as chairperson of the meeting.

13.10 **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) 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.
- (c) 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.

13.11 **Written resolutions of directors**

- (a) If:
 - (1) all the directors, other than any director:
 - A on leave of absence approved by the directors;
 - B who disqualifies himself or herself from considering the thing or resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; or
 - C who the directors reasonably believe is not entitled at law to do the thing or to vote on the resolution in question,assent to a document containing a statement to the effect that a 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 thing or resolution,then that thing or resolution is to be taken as having been done at or passed by a meeting of the directors.
- (b) For the purposes of rule 13.11(a):
 - (1) the meeting is to be taken as having been 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 by a director; 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 by a director;
 - (2) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be 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, fax, telephone or other electronic means.
- (c) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the thing or resolution to which the document relates.

- (d) Where a document is assented to in accordance with rule 13.11(a), the document is to be taken as a minute of a meeting of directors.

13.12 Minutes of meetings and minutes of resolutions

- (a) The directors must ensure minutes of proceedings and resolutions of general meetings and of meetings of directors (including committees of directors) are recorded in books kept for the purpose, within one month after the relevant meeting is held.
- (b) The directors must ensure minutes of resolutions passed by directors (and committees of directors) without a meeting are recorded in books kept for that purpose within one month after the resolution is passed.
- (c) The minutes of a meeting must be signed within a reasonable time by the chairperson of the meeting or the chairperson of the next meeting.

13.13 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.

13.14 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.

13.15 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 Executive director

- (a) The directors may appoint one or more of the directors as executive directors.
- (b) A director's appointment as an executive director automatically terminates if he or she ceases to be a director.
- (c) The directors may confer on an executive director such title as they think fit.

14.2 Company secretary

- (a) The first company secretary is the person who has consented to act as company secretary and who is named as the proposed company secretary in the application for registration of the company.

- (b) The directors must maintain at least one company secretary.
- (c) The directors may appoint one or more assistant secretaries.

14.3 Provisions that apply to all executive officers

- (a) A reference in this rule 14.3 to an executive officer is a reference to an executive director, company secretary or assistant secretary.
- (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 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.

15 Indemnity and insurance

15.1 Persons to whom the indemnity and insurance apply

The indemnity and insurance referred to in this rule apply to the following individuals (referred to as 'indemnified officers' in this rule):

- (a) each person who is or has been a director or executive officer (within the meaning of rule 14.3(a)) of the company; and
- (b) any other officers or former officers of the company as the directors in each case decide.

15.2 Indemnity

- (a) The company must indemnify, on a full indemnity basis and to the full extent permitted by law, each indemnified officer against all losses or liabilities (including costs and expenses) incurred by the person as an officer of the company.
- (b) This indemnity:
 - (1) is a continuing obligation and is enforceable by an indemnified officer even though that person has ceased to be an officer of the company; and
 - (2) operates only to the extent that the loss or liability in question is not covered by insurance.

15.3 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 indemnified officer against any liability incurred by the person as an officer of the company

where the directors consider it appropriate to do so.

15.4 Savings

Nothing in this rule:

- (a) affects any other right or remedy that an indemnified officer may have in respect of any loss or liability referred to in this indemnity or insurance; or
 - (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom this rule does not apply.
-

16 Auditor

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

17 Notices

17.1 Notices by the company to members

The company may give notices, including a notice of general meeting to a member:

- (a) personally;
- (b) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member; or
- (c) by sending it to the fax number or electronic address (if any) nominated by the member.

17.2 Notices by the company to directors

Subject to this constitution, a notice may be given by the company to any director either by serving it personally at, or by sending it by post in a prepaid envelope to, the director's usual residential or business address, or by electronic means or fax to such electronic address or fax number, as the director has supplied to the company for giving notices.

17.3 Notices by members or directors to the company

Subject to this constitution, a notice may be given by a member or director to the company by serving it on the company at, or by sending it by post in a prepaid envelope to the registered office of the company or by fax or electronic means to the principal fax number or the principal electronic address of the company at its registered office.

17.4 Time of service

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
 - (1) in the case of a notice of a general meeting, on the day after the date of its posting; or
 - (2) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by fax, service of the notice is to be taken to be effected if the correct fax number appears on the fax report generated by the sender's fax machine and to have been effected at the time the fax is sent.
- (c) Where a notice is sent by electronic means, service of the notice is to be taken to be effected:
 - (1) in the case of an electronic messaging system that contains a delivery verification function, on the generation by the electronic messaging system of a delivery verification notice or log

- entry, or other confirmation; or
- (2) in the case of electronic mail or other electronic messaging system (other than those referred to in rule 17.4(c)(1)), on the delivery to:
- A where the addressee is a natural person, the addressee's electronic mail or electronic messaging system account; or
 - B where the addressee is a corporation, the corporation's computer systems.
- (d) If service under rule 17.4(c) is on a day which is not a business day or is after 4.00pm (addressee's time), the notice is regarded as having been received at 9.00am on the next following business day.
- (e) For the purposes of rule 17.4(d), business day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in the place concerned.

17.5 Other communications and documents

Rules 17.1 to 17.4 (inclusive) apply, so far as they can and with any necessary changes, to the service of any communication or document.

17.6 Notices in writing

A reference in this constitution to a written notice includes a notice given by fax or electronic transmission or any other form of written communication.

18 Definitions and interpretation

18.1 Definitions

In this constitution:

Act means the Corporations Act 2001 (Cth); **auditor** means the auditor of the company;

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

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

Department means the Department of Communications, Information Technology and the Arts;

directors means the company's board of directors;

Guidelines means the Register's guidelines issued from time to time by the Department;

ITAA 97 means the Income Tax Assessment Act 1997 (Cth); **member** means a member of the company;

Register means the register of cultural organisations maintained by the Department under section 30-100 of ITAA 97;

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

Responsible Person means an individual who has a degree of responsibility to the wider Australian community as set out in the Guidelines.

18.2 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 or a provision of any legislation includes any amendment to

- that legislation or provision, any consolidation or replacement of that legislation or provision and any subordinate legislation made under that legislation;
- (c) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or representative;
 - (d) a reference to writing and written includes printing, lithography and other ways of representing or reproducing words in a visible form; and
 - (e) the singular (including defined terms) includes the plural and the plural includes the singular.

18.3 Headings

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

19 Application of the Act

19.1 What parts of the Act apply

Unless the contrary intention appears:

- (a) an expression used in a rule that deals with a matter dealt with by a provision of the Act has the same meaning as in that provision; and
- (b) subject to rule 19.1(a), an expression in a rule that has a defined meaning for the purposes of the Act has the same meaning as in the Act.

19.2 Replaceable rules displaced

- (a) The provisions of this constitution displace each provision of a section or subsection of the Act that applies (or would apply but for this rule) 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 Act.

20 Transitional provisions

This constitution must be interpreted in such a way that:

- (a) every director, managing director and secretary in office in that capacity immediately before this constitution is adopted continues in office subject to, and is taken to have been appointed or elected under, this constitution;
- (b) any register maintained by the company immediately before this constitution is adopted is taken to be a register maintained under this constitution;
- (c) any seal adopted by the company immediately before this constitution is adopted is taken to be a seal which the company has under a relevant authority given by this constitution; and
- (d) unless a contrary intention appears in this constitution, all persons, things, agreements and circumstances appointed, approved or created by or under the constitution of the company in force before this constitution is adopted, continue to have the same status, operation and effect after this constitution is adopted.