

Constitution

Opera Australia

ACN 000 755 153

A public company limited by guarantee

24 May 2019

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1 Preliminary

1.1 Nature of Company and liability

- (a) The Company is a public company limited by guarantee which is established to be, and to continue as, a charity.
- (b) The liability of each member is limited. Each member guarantees to contribute up to a maximum of \$20.00 to the assets of the Company if it is wound up while the member is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the Company exceed its assets. The liability of each member is limited to making such contribution and no more.

1.2 Defined terms and interpretation

The Dictionary in Schedule 1:

- (a) defines some of the terms used in this Constitution;
- (b) sets out the rules of interpretation which apply to this Constitution; and
- (c) clarifies the effect of the Corporations Act on this Constitution.

2 Charitable purpose and activities of the Company

2.1 Purpose

The Company is established for the primary public charitable purpose of promoting, encouraging and producing opera, musical theatre, music and any other art or performance (**Opera**) in any way whatsoever (**Charitable Purpose**).

2.2 Activities

The activities of the Company must be conducted in the furtherance of its Charitable Purpose and may include, without limitation:

- (a) advancing Opera through productions and events in major cities, smaller scale productions and events in regional centres and schools, and commissioning and presenting New Operatic Works;
- (b) presenting Opera to as many people, and in as many different places, as possible, and at the highest possible level;
- (c) ensuring that through innovation and evolution, the operatic and vocal musical form has a strong and egalitarian presence in Australian cultural life;
- (d) promoting, producing, commissioning or presenting Opera in collaboration with other companies and art forms;
- (e) providing training and development opportunities for Australian-based artists, musicians and arts workers involved in the production of Opera;
- (f) exploring new ways of presenting Opera to audiences in non-traditional venues and utilising new technology so as to increase access and opportunities for as many people as possible;

- (g) building an international profile for the Company through international co-productions, the use of international artists and by making the Company's performances available for broadcast or other dissemination internationally;
 - (h) archiving, recording and documenting performance activities of the Company;
 - (i) printing, publishing and distributing, using all available platforms, any material which may promote the Company's activities;
 - (j) constructing, purchasing, hiring or leasing property, assets or equipment to facilitate the activities of the Company;
 - (k) undertaking written or personal appeals to governments, individuals, trusts or corporations to procure funds to assist in the undertaking of the Company's activities;
 - (l) providing, as far as possible, the services and expertise of the Company to other entities in the spirit of collaboration and mentorship;
 - (m) presenting Opera in Australia to the widest audience possible, and ensuring particular engagement with Aboriginal and Torres Strait Islander peoples; and
 - (n) any other activities ancillary to or necessary for the fulfilment of the Charitable Purpose.
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3 Powers

Subject to rule 4, the Company has the legal capacity and powers of an individual both in and outside Australia and has all the powers of a company limited by guarantee, which may only be used to carry out the Charitable Purpose, and without limitation, 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 in 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 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 (including funding 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 in any medium including but not limited to newspapers, periodicals, books or leaflets or otherwise publish information in hard copy or by any electronic means;
 - (p) accept any gift of property, whether subject to any special trust or not;
 - (q) make donations for charitable purposes;
 - (r) decline or otherwise refuse to accept any gift (by will or otherwise), donation, settlement or other disposition of money or property;
 - (s) co-ordinate and arrange conferences, meetings, standing committees and commissions and other forums; and
 - (t) do all other things that are incidental to or convenient for carrying out the Charitable Purpose.
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4 Not-for-profit

4.1 Application of Company's income and property

The assets and income of the Company must be applied solely in furtherance of the Charitable Purpose.

4.2 No profits for members

No portion of the income, profits, financial surplus, assets or property of the Company may be paid or transferred, directly or indirectly, by way of dividend bonus or otherwise, to any member, except as provided in rule 4.3.

4.3 Payments in good faith

- (a) The Company may, with the approval of the directors, make payment in good faith to a member of the Company:
 - (i) by way of reasonable and proper payment for any goods supplied or services rendered to the Company (including payment as a consultant);
 - (ii) by way of interest on money lent to the Company by that member at a reasonable and proper rate per annum not exceeding the rate for the time being charged by the Company's bankers on overdrawn accounts; and
 - (iii) by way of reasonable and proper rent for premises let by that member to the Company.
- (b) For the avoidance of doubt, nothing in rule 4.3:
 - (i) prevents a member from receiving such services as may ordinarily be provided by the Company in the course of undertaking its activities; or
 - (ii) prohibits a member from receiving a benefit that is directly related to membership of the Company.

4.4 Amending this Constitution

- (a) Subject to rule 4.4(b), the members may amend this Constitution by passing a Special Resolution.
- (b) The Company must not pass a Special Resolution altering the Constitution if, as a result, the Company will cease to be a charity.

5 Membership

5.1 Members of the Company

- (a) The members of the Company are:
 - (i) all properly registered members of the Company as at the date of the adoption of this Constitution, provided their membership has not ceased under rule 6.1; and
 - (ii) any other person the directors admit to membership in accordance with this Constitution.
- (b) As at the date of the adoption of this Constitution, there are three classes of members:
 - (i) Ordinary Members;
 - (ii) Director Members; and
 - (iii) Honorary Life Members.
- (c) Notwithstanding the classes of membership described in this Constitution, the Company may create other classes of membership with rights, privileges and eligibility as determined by the directors from time to time.

- (d) A person may hold only one class of membership at any time. If a person is an Ordinary Member and subsequently becomes a Director Member, that person will cease to be an Ordinary Member upon that person becoming a Director Member.
- (e) Subject to this Constitution, the directors may establish, maintain and amend a membership policy from time to time, which is to be made available to the members of the Company (**Membership Policy**).
- (f) A person shall be a member of the Company from the date that they are admitted into the Company's register of members.

5.2 Membership eligibility requirements

The directors may only admit as a member a person who:

- (a) is a natural person;
- (b) is 18 years of age or older;
- (c) agrees to be bound by this Constitution, and any other rules, by-laws, regulations, policies or standards prescribed by the directors from time to time;
- (d) pays any membership fee that may be required under rule 5.10; and
- (e) satisfies such other membership criteria, including any Membership Policy, as the directors, acting reasonably, may determine from time to time.

5.3 Ordinary Member

- (a) Subject to any Membership Policy:
 - (i) any person may upon application (in such form as is determined by the directors from time to time) be admitted by the directors, at their discretion, as an ordinary member (**Ordinary Member**);
 - (ii) the person's membership takes effect on the date of the directors' decision under rule 5.3(a)(i); and
 - (iii) a person shall remain an Ordinary Member up to and including 31 December in the year following the person's admission. An Ordinary Member's membership will thereafter renew on 1 January each year, provided that the person has not ceased to be a member under rule 6.1.
- (b) The Company's membership of Ordinary Members must not exceed 1,000 Ordinary Members. The directors may by resolution change the maximum number of members, but must not determine a maximum which is less than the number of members at the time the determination takes effect.

5.4 Director Member

- (a) A person who is elected or appointed as a director of the Company from time to time will be admitted as a director member upon the person's election or appointment (**Director Member**).
- (b) A person shall remain as a Director Member until that membership ceases under rule 6.1.

5.5 Honorary Life Member

- (a) Subject to any Membership Policy, a person invited by the directors, at their discretion, to become a life member of the Company and who accepts such invitation will be admitted as an honorary life member (**Honorary Life Member**).
- (b) An Honorary Life Member shall hold membership from the date of acceptance under rule 5.5(a) until that membership ceases under rule 6.1.

5.6 Admission

- (a) A person who becomes a Director Member or an Honorary Life Member under this Constitution is not required to make an application for membership. However, that person must, upon becoming a member of the Company, provide his or her details to the Company to be entered into the members' register.
- (b) Subject to rule 5(3)(b), after receipt of an application for Ordinary Membership, the directors must consider the application and determine whether to admit or reject the application. The directors may, but are not required to, provide reasons for rejecting an application.
- (c) If an applicant is admitted as a member of the Company, the Company must ensure that:
 - (i) the applicant is given notice of admission as a member of the Company; and
 - (ii) the name and details of the applicant are entered in the members' register in accordance with rule 5.9.
- (d) The Company must ensure that each applicant not admitted as a member of the Company is informed of this decision.
- (e) The directors may, at their complete discretion, postpone the assessment of all membership applications (including by modifying any application delegations or processes) received during the period between the giving of notice of a general meeting and the holding of the general meeting to which the notice relates, including any adjournments.

5.7 Member's rights

In addition to the voting rights set out in rule 7.12, each member has the right to receive notices of and to attend and be heard at any general meeting of the Company.

5.8 Membership not transferable

Membership of the Company and the associated rights cannot be transferred or sold in any manner whatsoever.

5.9 Register of members

- (a) A register of members must be kept in accordance with law.
- (b) Without limiting the requirement under rule 5.9(a), the following must be entered in the register in respect of each member:
 - (i) the name and address of the member;

- (ii) the date of admission to membership; and
- (iii) any other information required by law or by the directors from time to time.

5.10 Membership fees

- (a) Subject to rule 5.10(b), the directors may at their complete discretion determine or vary from time to time:
 - (i) the membership application fee (if any);
 - (ii) the annual membership fee (if any), the due date for its payment and the manner of payment; and/or
 - (iii) any other amount to be paid by each member, or any class of members, whether of a recurrent or any other nature, the due date for its payment and the manner of payment.
- (b) No annual membership fee is payable by:
 - (i) Honorary Life Members; or
 - (ii) Director Members.
- (c) Each member must pay the amounts determined according to rule 5.10(a) within 30 days of the amount being due.
- (d) The directors may at their complete discretion waive all or some of the fees payable under rule 5.10(c) by one or more members at any time.

5.11 Membership renewal

The directors may, at their discretion, send a notice to one or more members requesting that member to renew membership of the Company and/or to confirm or update that member's details (**Membership Renewal Notice**).

6 Ceasing to be a member

6.1 Automatic cessation of membership

- (a) A person immediately ceases to be a member if the person:
 - (i) resigns from membership in accordance with rule 6.2;
 - (ii) dies;
 - (iii) becomes bankrupt;
 - (iv) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under mental health laws;
 - (v) subject to any Membership Policy, fails to pay any amount payable in accordance with rule 5.10 within 30 days, or such later time as the directors may determine, after the amount becomes due;
 - (vi) is expelled from membership under rule 6.3;

- (vii) being a Director Member, resigns, retires or is removed as a director of the Company; or
 - (viii) no longer complies with the membership eligibility requirements in rule 5.2.
- (b) Subject to this Constitution, a member who has ceased to be a member by virtue of rule 6.1(a)(i), 6.1(a)(v), 6.1(a)(vii) or 6.1(a)(viii) may reapply for membership of the Company, in accordance with the Membership Policy applicable at the time of the reapplication.

6.2 Resignation from membership

A member may resign from membership of the Company at any time by providing written notice to the Company addressed to the chair or the Secretary. Unless the notice provides otherwise, the resignation takes effect from the date the notice is received.

6.3 Expulsion of member

- (a) The directors may resolve to expel a member (other than a Director Member) if that member:
- (i) has refused or neglected to comply with the provisions of this Constitution; or
 - (ii) has acted in a way that, in the opinion of the directors, is, or could be, prejudicial to the interests or reputation of the Company (**Member Expulsion Resolution**).
- (b) At least seven days before considering a Member Expulsion Resolution, the directors must give the member in question written notice stating:
- (i) that the directors are considering expelling the member;
 - (ii) the reasons why the directors are considering the expulsion;
 - (iii) the date, place and time of the meeting at which the resolution is to be considered;
 - (iv) the right of the member to respond, orally or in writing, to the reasons for the proposed expulsion set out in the notice; and
 - (v) if the member chooses to respond orally, the right of the member to address the directors at the meeting at which the resolution is to be considered, but not to be present during any other part of the meeting or any director deliberations or the putting of or voting on the resolution unless the directors resolve otherwise.
- (c) The directors must within seven days notify the relevant member in writing of the outcome of a Member Expulsion Resolution. The directors' decision is final.
- (d) If the directors resolve to expel the member, the member ceases to be a member on receipt of the notice under rule 6.3(c). A member who has been expelled from membership of the Company is not permitted to reapply for membership and is ineligible to be elected or appointed as a director of the Company.
- (e) The directors may adopt such other policies and procedures, consistent with this rule 6.3, relating to the expulsion of members as they may determine from time to time.

6.4 Effects of cessation of membership

- (a) Where a person ceases to be a member:
 - (i) that member's name must be removed from the register of members;
 - (ii) the member forfeits all rights and privileges attached to membership and all rights which that member may have against the Company arising out of the membership; and
 - (iii) the Company has no liability to the member in respect of the member's removal from the register of members.
- (b) A person who ceases to be a member remains liable for:
 - (i) any moneys owing to the Company; and
 - (ii) in the case of the Company being wound up within one year of the date of the cessation of membership, the relevant contribution under rule 1.1(b).

7 General meetings

7.1 Introduction

For as long as the Company is registered as a charity with the Australian Charities and Not-for-Profits Commission or its successor, and for as long as the law permits or requires, the directors must ensure that the Australian Charities and Not-for-Profits Commission Governance Standards are complied with.

7.2 Annual general meeting

- (a) A general meeting, called the annual general meeting, must be held at least once in every calendar year at such time and place as may be determined by the directors.
- (b) The business of an annual general meeting may include any of the following, even if it is not referred to in the notice of meeting:
 - (i) a review of the Company's activities;
 - (ii) a review of the Company's finances;
 - (iii) any auditor's report;
 - (iv) the election of directors; and
 - (v) the appointment and remuneration of the auditor, if any.

7.3 Calling of general meetings

- (a) The calling of a general meeting of members may be initiated by:
 - (i) a resolution of the directors;
 - (ii) 10% of the members; or

- (iii) a court in accordance with the Corporations Act.

7.4 Notice of general meetings

- (a) Notice of a general meeting of members (including an annual general meeting) must be provided in writing at least 21 days before the meeting to:
 - (i) each member;
 - (ii) each director; and
 - (iii) the auditor of the Company, if any.
- (b) Subject to rule 7.4(c), notice of a general meeting may be provided less than 21 days before the meeting if:
 - (i) for an annual general meeting, all members entitled to vote at the annual general meeting agree beforehand; or
 - (ii) for any other general meeting, members with at least 95% of the votes that may be cast at that meeting agree beforehand.
- (c) Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
 - (i) remove a director;
 - (ii) appoint a director to replace a director who was removed; or
 - (iii) remove an auditor.
- (d) A notice of a general meeting must specify:
 - (i) the date, time and place of the meeting which, despite the provisions of the Corporations Act dealing with the timing of annual general meetings, may, for as long as the Company is a registered charity, be held at any reasonable date and time;
 - (ii) if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
 - (iii) the general nature of the business to be transacted at the meeting, including the text of any resolutions to be proposed at the meeting; and
 - (iv) a place, fax number or electronic address for the receipt of proxies.
- (e) A person may waive the requirement of notice of a general meeting by written notice to the Company.
- (f) 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 7.4 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
 - (i) the non-receipt or failure occurred by accident or error; or
 - (ii) before or after the meeting, the person:

- (A) waives notice of that meeting under rule 7.4(e); or
 - (B) notifies the Company of the person's agreement to that act, matter, thing or resolution by notice in writing to the Company.
- (g) A person's attendance at a general meeting waives any objection that person may have to:
- (i) a failure to give notice, or the giving of a defective notice, of the meeting; and
 - (ii) 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.
- (h) A person who is entitled to receive notice of a meeting under this rule 7.4 or who is requested by the chair to attend a general meeting is entitled to be present whether or not the person is a member.

7.5 Postponement, change or cancellation

The directors may by resolution postpone, cancel or change the place of a general meeting by notice to all members if:

- (a) the meeting is considered unnecessary;
- (b) the venue is considered unreasonable or impractical; or
- (c) a change is reasonably considered necessary for conducting the meeting efficiently or conveniently.

7.6 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum is present when the meeting proceeds to business and remains present throughout the meeting.
- (b) The quorum for a general meeting of members is eight members (including five Director Members) present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) where the meeting was initiated by members, then the meeting must be dissolved; or
 - (ii) in any other case:
 - (A) the meeting stands adjourned to such day, time and place as the directors determine and notify to members, or if no determination is made by the directors, 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.

7.7 Use of technology at general meetings

- (a) The Company may hold a general meeting at two or more venues linked together using any form of technology as long as it gives the members as a whole in those places a reasonable opportunity to participate in proceedings.
- (b) The chair, in his or her discretion, or the directors, in their discretion, may determine that members who do not attend a venue referred to in 7.7(a) may participate in the meeting using any form of technology, and may require the adoption of any additional procedures which are in his, her or their opinion necessary or desirable for proper and orderly debate or discussion.
- (c) All the provisions of this Constitution relating to meetings of members apply, as far as they can and with any necessary changes, to meetings of the members in accordance with rule 7.7(a) or 7.7(b).
- (d) A member who participates in a meeting in accordance with rule 7.7(a) or 7.7(b) is taken to be present in person at the meeting.
- (e) A meeting in accordance with rule 7.7(a) or 7.7(b) is taken as held at the place decided by the chair of the meeting, as long as at least one member is at that place for the duration of the meeting.
- (f) If, before or during a meeting in accordance with rule 7.7(a) or 7.7(b), any technical difficulty occurs which results in a member not being able to participate in the meeting, the chair may, subject to the Corporations Act and this Constitution, allow the meeting to continue or may adjourn the meeting either for such reasonable period as may be required to remedy the technical difficulty or to such other time and place as the chair deems appropriate.

7.8 Chair of general meetings

- (a) The chair of the Board must preside as chair at each general meeting if present within 15 minutes after the time appointed for the meeting, and willing to act.
- (b) If, at a general meeting:
 - (i) there is no chair of the Board;
 - (ii) the chair of the Board is not present within 15 minutes after the time appointed for the meeting; or
 - (iii) the chair of the Board is not willing to act as chair of the meeting,the directors present must elect another person to preside as chair at the meeting (or part of the meeting).
- (c) Where a chair is elected under rule 7.8(b), the person must be:
 - (i) a director who is present at the meeting and willing to act; or
 - (ii) if no director present at the meeting is willing to act, a member who is present at the meeting and willing to act.
- (d) The chair of a general meeting may, for any item of business or discrete part of the meeting, vacate the chair in favour of another person nominated by him or her.

7.9 Conduct of general meetings

- (a) The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting, and may require the adoption of any procedures which are in the opinion of the chair necessary or desirable for:
 - (i) proper and orderly debate or discussion; and
 - (ii) the proper and orderly casting or recording of votes at the general meeting.
- (b) A decision by a chair under rule 7.9(a) is final.
- (c) The chair of a general meeting at which a quorum is present may, and must if so directed by the meeting, adjourn the meeting from time to time and place to place.
- (d) No business may be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (e) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as an original meeting.
- (f) Except as provided by rule 7.9(e), it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (g) Where a meeting is adjourned, the directors may postpone, cancel or change the venue of the adjourned meeting, but a general meeting initiated by members or by the court may not be postponed beyond the date by which the meeting is required to be held, and may not be cancelled without the consent of the members who or court that requested it.

7.10 Decisions at general meetings

- (a) Except in the case of any resolution which under this Constitution or as a matter of law requires a Special Resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting and entitled to vote, and that decision is for all purposes a decision of the members.
- (b) If there is an equal number of votes cast for and against a resolution at a meeting of members, the chair of the meeting may exercise a second or casting vote in addition to any vote the chair may have as a member of the Company.
- (c) Unless a poll is demanded, a resolution put to the vote of a general meeting must be decided on a show of hands of members, with each member present indicating a preference by a means appropriate to that member and that is readily interpreted and understood by the chair.
- (d) A member may only exercise one vote on a show of hands regardless of whether that member also holds one or more proxies.
- (e) A poll may be demanded before a vote is taken or before or immediately after the declaration of the result on a show of hands by:
 - (i) the chair of the meeting;
 - (ii) at least five members present and entitled to vote on the relevant resolution;
or

- (iii) a member or members present at the meeting and representing at least 5% of the votes that may be cast on the resolution on a poll.
- (f) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- (g) Unless a poll is duly demanded:
 - (i) a declaration by the chair 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
 - (ii) an entry to that effect in the book containing the minutes of the proceedings of the Company,

are conclusive evidence that the resolution was carried or lost, as the case may be, without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (h) Except for a poll on the question of an adjournment, which must be taken immediately, if a poll is demanded at a general meeting, it will be taken when and in the manner that the chair directs, and in all cases the result of the poll will be a resolution of the meeting at which the poll was demanded.
- (i) The demand for a poll may be withdrawn.

7.11 Direct voting

- (a) Despite anything to the contrary in this Constitution, the directors may decide that, at any general meeting, a member who is entitled to vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A direct vote includes a vote delivered to the Company by ballot, post, fax or other electronic means approved by the directors.
- (b) The directors may adopt regulations, rules and procedures in relation to direct voting, including the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid and any such regulations, rules and procedures will have effect as if they were set out in this Constitution.
- (c) A direct vote on a resolution at a meeting is of no effect and will be disregarded if the direct vote is cast otherwise than in accordance with any regulations, rules and procedures adopted under rule 7.11(b).
- (d) Subject to any regulations, rules and procedures adopted under rule 7.11(b), if the Company receives a valid direct vote on a resolution and prior to, after or at the same time as receipt of the direct vote, the Company receives an instrument appointing a proxy to vote on behalf of the same member on that resolution, the Company may regard the direct vote as effective in respect of that resolution and disregard any vote cast by the proxy on the resolution at the meeting.

7.12 Voting rights

- (a) Subject to this Constitution and to any rights or restrictions attached to any class of membership, each member has the right to exercise one vote:
 - (i) on a show of hands at a meeting of members;

- (ii) on a poll at a meeting of members; and
 - (iii) when voting upon a resolution to be determined without a meeting under rule 7.17.
- (b) Subject to rule 7.10(d), a proxy 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.

7.13 Objection to qualification to vote

- (a) An objection to the qualification of a person to vote may only be raised before or at the meeting or adjourned meeting at which the vote objected to takes place.
- (b) Any objection must be referred to the chair of the meeting to determine whether or the person may vote. The chair's decision is final.
- (c) A vote allowed after an objection is valid for all purposes.

7.14 Representation at general meetings

- (a) Subject to this Constitution, each member entitled to vote at a meeting of members may vote:
 - (i) in person; or
 - (ii) by one proxy.
- (b) A member is not entitled to vote at a general meeting unless all sums presently payable by the member in respect of membership of the Company have been paid.
- (c) A proxy may but does not need to be a member of the Company.
- (d) A proxy may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.

7.15 Appointment of a proxy

- (a) An instrument appointing a proxy need not be in any particular form as long as it is in writing, is signed by the member appointing the proxy and contains the following details:
 - (i) the Company's name;
 - (ii) the member's name and address;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the meeting(s) at which the appointment may be used.
- (b) The chair of a meeting may require any person purporting to act as a proxy to establish to the satisfaction of the chair that the person has been validly appointed as a proxy and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- (c) A proxy may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy (or a certified copy of it) is received:

- (i) at the registered office of the Company, or the fax number or electronic address at its registered office, or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting; and
 - (ii) at least 48 hours before the time scheduled for the commencement of the meeting.
- (d) A vote given in accordance with the terms of an instrument appointing a proxy is valid despite the revocation of the instrument or of the authority under which the instrument was executed, if no notice in writing of revocation has been received by the Company by the time and at one of the places at or in the manner in which the instrument appointing the proxy is required to be received under rule 7.15(c).

7.16 Authority of proxy

- (a) Unless otherwise provided in the appointment, an appointment of a proxy will be taken to confer authority:
- (i) to agree to a meeting being convened by shorter notice than is required by this Constitution;
 - (ii) to agree to a resolution (including a Special Resolution) being proposed and voted on at a meeting of which less than the period of notice required has been given;
 - (iii) to speak to any proposed resolution on which the proxy may vote;
 - (iv) to demand or join in demanding a poll on any resolution on which the proxy may vote;
 - (v) even though the appointment may refer to specific resolutions and may direct the proxy 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 chair, to vacate the chair, or to adjourn the meeting; and
 - (C) to act generally at the meeting; and
 - (vi) even though the appointment may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the rescheduled or adjourned meeting or at the new venue.
- (b) An instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument so provides, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.
- (c) Unless otherwise permitted by the chair, the authority of a proxy to speak and vote for a member at a general meeting is suspended while that member is present at the meeting.

7.17 Decisions without meetings

Members may pass resolutions and otherwise make decisions outside of a members' meeting in any manner (including through the use of technology) as long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of member resolutions adopted by the directors from time to time.

8 Directors

8.1 Number of directors

- (a) The minimum number of directors is five and the maximum is 12.
- (b) The directors may change the maximum number of permitted director positions in accordance with the Corporations Act, but must not determine a maximum which is less than the number of directors in office at the time the determination takes effect.
- (c) If at any time the number of directors falls below five, the remaining director or directors may act, but only:
 - (i) in an emergency;
 - (ii) for the purpose of convening a general meeting of the Company; or
 - (iii) for the purpose of increasing the number of directors to the minimum number of directors.

8.2 Election and appointment of directors

- (a) The directors in office on the date that this Constitution was adopted by the Company continue in office but on the terms and conditions set out in this Constitution.
- (b) Directors are elected by the members by ordinary resolution at the Company's annual general meeting.
- (c) A person is eligible for election as a director of the Company only if he or she:
 - (i) is at least 18 years of age;
 - (ii) is not ineligible to be a director under the Corporations Act or the ACNC Act; and
 - (iii) gives the Company his or her signed consent to act as a director of the Company.
- (d) A person may be elected to the office of a director at an annual general meeting only in one of the following ways:
 - (i) **Retirement and re-election:** the person is a director retiring from office under rule 8.3(a) and standing for re-election at that meeting;

- (ii) **Directors' nomination:** the person has been nominated by the directors or a committee of the Board for election at that meeting; or
 - (iii) **Individual nomination supported by members:** the person nominates himself or herself under rule 8.2(e).
- (e) A person, whether or not that person is a member, may nominate himself or herself as a candidate for election as a director at an annual general meeting by signing a notice of nomination, together with written nominations from no less than two members (other than the nominee), and serving it on the Company at least 30 days before the annual general meeting.
- (f) Subject to rule 8.2(c), the directors may appoint a person to be a director, either in addition to the existing directors or to fill a casual vacancy, until the next annual general meeting.

8.3 Retirement of directors by rotation

- (a) A director elected under rule 8.2(b) must not hold office without re-election beyond three years or the end of the third annual general meeting following the meeting at which that person was elected or re-elected (whichever is the later).
- (b) At each annual general meeting:
- (i) any director appointed under rule 8.2(f) must retire from office as director; and
 - (ii) at least one-third of the remaining directors (rounded up, if necessary, to the nearest whole number) must retire from office as directors.
- (c) The directors may determine which of them must retire under rule 8.3(b)(ii). If the directors cannot agree, then the director or directors who must retire at a meeting in accordance with rule 8.3(b)(ii) is the director who has, or are the directors who have, been longest in office since their last election. As between those last elected on the same day, the director or directors to retire must be determined by agreement among themselves or, in the absence of agreement, by lot.
- (d) A director retiring from office under rule 8.3(b) is eligible for election or re-election subject to a maximum term of nine years, whether continuous or broken, following the meeting at which that person was first elected under rule 8.2(b), unless the maximum term for that particular director is varied by an ordinary resolution of the directors.
- (e) No director whose maximum term has been varied under rule 8.3(d) shall serve a term greater than 12 years, whether continuous or broken, following the meeting at which that person was first elected under rule 8.2(b), unless:
- (i) that director is chair of the OACF, in which case that director may continue to hold office until the first annual general meeting after that director ceases to be chair of the OACF; or
 - (ii) members at an annual general meeting resolve to extend that director's term by an additional period of no longer than two years, by a majority of votes cast by the members present at the meeting and entitled to vote.
- (f) If at an annual general meeting the number of vacancies equals or exceeds the number of candidates, all candidates shall be deemed, without the necessity of

taking a vote, to have been elected or re-elected, unless at that meeting it is expressly resolved not to fill one or more of the vacancies.

- (g) For the purpose of rule 8.3(f), vacancies at any meeting shall be deemed to be equal to the number of directors who will retire at that meeting.
- (h) The retirement of a director from office and the re-election of the director or the election of another person to that office (as the case may be) take effect at the conclusion of the annual general meeting at which the retirement and re-election or election occur.

8.4 Vacation of office

In addition to the circumstances prescribed by law, the office of any director becomes vacant if the director:

- (a) retires under rule 8.3(b) and is not elected or re-elected;
- (b) is removed as a director by a resolution of the directors;
- (c) holds any office of profit in the Company;
- (d) becomes ineligible to be a director of the Company under the Corporations Act or ACNC Act or in any other circumstances prescribed by law;
- (e) 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;
- (f) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally;
- (g) fails to declare any material personal interest, whether direct or indirect, in a contract or proposed contract with the Company, and the directors do not within 30 days of that failure resolve to confirm the director's appointment or election (as the case may be) to the office of director;
- (h) fails to declare the nature of any interest as required by law unless within 30 days of that failure the directors resolve to confirm the director's appointment, election or re-election (as the case may be) to the office of director;
- (i) is convicted of an indictable offence, unless within 30 days of that conviction the directors resolve to confirm the director's appointment, election or re-election (as the case may be) to the office of director;
- (j) fails to attend:
 - (i) three or more consecutive directors' meetings; or
 - (ii) four or more directors' meetings in any 12 month period,without leave of absence approved by the directors;
- (k) dies; or
- (l) resigns by notice in writing to the Company.

8.5 Payments to directors

- (a) Directors must not receive any payment for acting as a director but, subject to rule 8.5(b), are entitled to:
 - (i) be reimbursed for all reasonable authorised travelling and other expenses properly incurred by them in connection with the affairs of the Company, including attending and returning from general meetings of the Company, meetings of the directors and meetings of committees; and
 - (ii) receive payment for any goods supplied or services rendered to the Company (other than as a director), as long as the amount is proper and reasonable in the circumstances.
- (b) Notwithstanding anything else in this Constitution, no payment of any kind which is permitted to be paid to a director by this Constitution can be made by the Company to a director until that payment is approved by:
 - (i) the directors; or
 - (ii) the person or persons to whom the directors have delegated such authority under rule 8.15 or rule 8.16.

8.6 Interested directors

- (a) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the Company as the directors think fit.
- (b) A director is not disqualified, merely because of being a director, from entering into a contract or arrangement with the Company as vendor, purchaser or in any other capacity.
- (c) No contract or other arrangement made between a director and the Company is voided merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (d) No director contracting with the Company or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under a contract or arrangement of that kind merely because the director holds office as a director or because of the fiduciary obligations arising out of that office, provided that the director complies with any disclosure requirements applicable to the director under rule 8.6(j).
- (e) Each director must disclose all personal interests and other matters that could, or do, give rise to a conflict of interest in relation to a matter or decision being considered by the directors.
- (f) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at the meeting or vote on the matter, unless the directors who do not have a material personal interest pass a resolution in accordance with the Corporations Act which permits that director to do so.
- (g) Subject to rule 8.6(h), a director who is in any way interested in an arrangement (other than by having a material personal interest) may, despite that interest, be counted in determining whether a quorum is present at any meeting of directors considering that arrangement.
- (h) Rule 8.6(g) does not apply to the extent that it would be contrary to law.

- (i) A director of the Company may be a director or other officer of:
 - (i) a related body corporate of the Company;
 - (ii) a body corporate promoted by the Company; or
 - (iii) a body corporate in which the Company is interested, as shareholder or otherwise,

or be otherwise interested in any of those bodies corporate, with the consent of the directors of the Company. A director is not accountable to the Company for any remuneration or other benefits received by the director as a director or officer of that body corporate or from having an interest in that body corporate.

- (j) The directors may make regulations requiring the disclosure of interests that a director, and any person deemed by the directors to be 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 rule 8.6(j) bind all directors and apply in addition to any obligations imposed on the directors by this Constitution and the Corporations Act to disclose interests to the Company.
- (k) No act, transaction, agreement, instrument, resolution or other thing is invalid or voidable merely because a person fails to comply with any regulations made under rule 8.6(j).

8.7 Powers and duties of directors

- (a) The directors are responsible for the governance, business and affairs of the Company and may exercise all the powers of the Company which are not required by law or this Constitution to be exercised by the members.
- (b) The directors must comply with their legal duties as directors.
- (c) The directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments or other documents must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the Company.
- (d) The directors may:
 - (i) appoint or employ any person to be an officer, agent or attorney of the Company for such purposes and period, and on such conditions, as they think fit;
 - (ii) 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
 - (iii) subject to any contract between the Company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney of the Company at any time, with or without cause.
- (e) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit.

8.8 Meetings of directors

- (a) The directors may hold meetings (including by technological means) for the conduct of business and adjourn and otherwise regulate them as they think fit.
- (b) The directors must meet as often as required for the proper discharge of their directors' duties.
- (c) On becoming a director, that director consents to the use of technology to call or hold a directors' meeting. A director may withdraw his or her consent within a reasonable period before the meeting.
- (d) Subject to the Corporations Act, the contemporaneous linking together by a form of technology of the number of directors sufficient to constitute a quorum constitutes a meeting of the directors, and all the provisions of this Constitution relating to meetings of the directors apply, so far as they can and with any necessary changes, to meetings of the directors held using a form of technology.
- (e) A meeting in accordance with rule 8.8(d) is taken to be held at the place where the chair of the meeting is or at such other place the chair of the meeting decides on, as long as at least one of the directors involved is at the place for the duration of the meeting.
- (f) A director who participates in a meeting in accordance with rule 8.8(d) is taken to be present in person at the meeting.
- (g) If, before or during the meeting, any technical difficulty occurs which results in a director not being able to participate in the meeting, the chair may adjourn the meeting until the difficulty is remedied or, provided a quorum of directors remains present, may continue with the meeting.

8.9 Convening of meetings of directors

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

8.10 Notice of directors' meetings

- (a) Notice of a directors' meeting must be given to each director, other than a director on leave of absence approved by the directors.
- (b) A notice of a directors' meeting:
 - (i) must specify the time and place of and, if relevant, the form of technology for, the meeting;
 - (ii) need not state the nature of the business to be transacted at the meeting;
 - (iii) may be given immediately before the meeting; and
 - (iv) may be given in person, by post or by a form of technology.
- (c) A director may waive the right to receive a notice of a meeting by notifying the Company to that effect in person or by post, telephone, fax or by a form of technology.

- (d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
 - (i) the non-receipt or failure occurred by accident or error;
 - (ii) before or after the meeting, the director:
 - (A) waives notice of that meeting under rule 8.10(c); or
 - (B) notifies the Company of the director's agreement to that act, matter, thing or resolution personally, by post or by a form of technology; or
 - (iii) the director attends 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.

8.11 Quorum for directors' meetings

- (a) No business may be transacted at a directors' meeting unless there is a quorum of directors at the time the business is dealt with.
- (b) Unless the directors determine otherwise, the quorum for a directors' meeting is three directors and the quorum must be present at all times during the meeting.
- (c) If there is a vacancy in the office of a director, the remaining director or directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, the remaining director or directors may act only in an emergency or for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or of convening a general meeting of the Company.
- (d) If, within 30 minutes after the time appointed for the meeting, a quorum is not present, then, without prejudice to the right of those present to discuss but not to vote on any matter, the meeting will be dissolved or stand adjourned to such time, date and place as those present at the meeting decide.

8.12 Chair of directors

- (a) The directors must elect one of the directors to the office of chair.
- (b) A person may only fill the office of chair for so long as that person is a director of the Company.
- (c) The chair must preside as chair at each directors' meeting unless he or she is:
 - (i) unable to attend;
 - (ii) not present within 20 minutes after the time appointed for the meeting; or
 - (iii) unwilling to act.
- (d) If at a meeting of directors:
 - (i) there is no chair of directors;

- (ii) the chair of directors is unable to attend a directors' meeting or is not present at the meeting within 20 minutes after the appointed time of the meeting; or
- (iii) the chair of directors is not willing to act as chair of the meeting or part of the meeting,

the directors present at that meeting must elect one of themselves to preside as chair for that meeting or part of it.

8.13 Decisions of directors

- (a) A quorum of directors at a directors' meeting is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under the law and this Constitution.
- (b) Questions arising at a directors' meeting and any other matter to be decided by the directors under this Constitution are to be decided by a majority of votes cast by the directors present and entitled to vote on the resolution and a decision of that kind is for all purposes a decision of the directors.
- (c) If there is an equal number of votes cast for and against a resolution at a directors' meeting, the chair of the meeting may exercise a second or casting vote in addition to any vote the chair may have as a director of the Company.

8.14 Decisions without meetings

- (a) An act, matter or thing is taken to have been done or to be a resolution passed by a meeting of the directors if:
 - (i) all directors receive written notice of the act, matter, thing or resolution which is to be considered;
 - (ii) a majority of the directors assents to a document containing a statement that they are in favour of the act, matter, thing or resolution set out in the document, other than:
 - (A) a director on leave of absence approved by the directors;
 - (B) a director who disqualifies himself or herself from considering the act, matter or thing in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
 - (C) a director who the directors reasonably believe is not entitled to do the act, matter or thing or to vote on the resolution in question; and
 - (iii) the directors who assent to the document would have constituted a quorum at a meeting held to consider that act, matter, thing or resolution.
- (b) Subject to rule 8.14(a)(iii), the act, matter or thing is taken to have been done or the resolution passed when the document is last assented to by the director constituting a majority under rule 8.14(a)(ii).
- (c) Two 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.

- (d) A director may signify assent to a document by signing the document or by notifying the Secretary or the chair of the director's assent in person or by post, fax, telephone or other form of technology.
- (e) 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 act, matter, thing or resolution to which the document relates.
- (f) Where a document is assented to in accordance with this rule 8.14, the document is to be taken as a minute of a meeting of directors.

8.15 Committees of directors

- (a) The directors may:
 - (i) establish one or more committees consisting of such persons as they determine;
 - (ii) delegate to each committee such of their powers as are required for the effective and efficient running and administration of the committee;
 - (iii) revoke any or all of the powers delegated to each committee and vary the nature and scope of the powers delegated; and
 - (iv) change the membership of a committee at any time or dissolve it altogether.
- (b) A committee must act, and exercise the powers delegated to it, in accordance with any directions of the directors which, for the avoidance of doubt, may be contained in policies, terms of reference, guidelines or protocols.
- (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, unless the directors resolve to adopt alternative procedures for that committee.
- (d) The directors may continue to exercise all of their powers despite any delegation made under this rule 8.15.

8.16 Delegation to individuals

- (a) The directors may resolve to delegate any of their powers to such individual or individuals as they determine including:
 - (i) to one or more directors;
 - (ii) to one or more members; or
 - (iii) to one or more employees.
- (b) The directors may delegate their powers for such time as they determine and may revoke or vary any power so delegated.
- (c) A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the directors and this Constitution.

- (d) The directors may continue to exercise all of their powers despite any delegation made under this rule.
- (e) A delegation under this rule need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of a specified office or position.

8.17 Validity of acts

An act done by a director or by a meeting of the directors or a committee attended by a director is not invalidated merely because:

- (a) of a defect in the appointment of the director;
- (b) the person is disqualified from being a director or has vacated office; or
- (c) the person is not entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

9 Secretary

9.1 Appointment of Secretary and terms of office

- (a) The directors must appoint at least one secretary who may be, but does not need to be, a director (**Secretary**).
- (b) The appointment of a Secretary may be for the period, on the conditions, and subject to rule 9.1(c), at the remuneration the directors determine.
- (c) A director may not be remunerated in that person's capacity as Secretary.

9.2 Removal from office

Subject to any contract between the Company and the relevant Secretary, a Secretary of the Company may be removed or dismissed by the directors at any time, with or without cause. If that person is a director, such removal or dismissal does not remove that person from office as a director.

9.3 Role of Secretary

- (a) The duties of the Secretary include, but are not limited to:
 - (i) ensuring that the necessary registers required by law are established and properly maintained;
 - (ii) ensuring that any required annual returns and annual reports are lodged with the appropriate regulator on time; and
 - (iii) arranging meetings of the members and the directors, including the sending out of notices, the preparation of agenda and the compilation of minutes.
- (b) An act done by a person acting as a Secretary is not invalidated merely because:
 - (i) of a defect in the person's appointment as a Secretary; or

- (ii) the person is disqualified from being a Secretary,
if that circumstance was not known by the person when the act was done.
-

10 Minutes and records

10.1 Minutes

- (a) The directors must ensure that all:
 - (i) minutes of meetings and resolutions of general meetings;
 - (ii) minutes of resolutions passed by members without a meeting;
 - (iii) minutes of meetings and resolutions of directors (and of committees of directors); and
 - (iv) minutes of resolutions passed by directors (and committees of directors) without a meeting,are recorded and entered in books kept for that purpose, within 30 days after the meeting is held or the resolution is passed.
- (b) The minutes of a meeting (of members, directors or a committee of directors) must be signed by the chair of the meeting or the chair of the next meeting within a reasonable time after the meeting.

10.2 Records

- (a) The Company must keep all financial and other records required by law.
- (b) The Company must establish and administer all registers required by law to be kept and each member must provide the Company with such information as is required for the Company to comply with this rule. If events occur which would cause the information contained in a register maintained by the Company to be inaccurate the member must notify the Company in writing of the change within 21 days of the date of such change occurring.
- (c) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.

10.3 Inspection of records

- (a) Subject to applicable law and rule 10.3(b), the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the Company or any of them will be open to inspection.
- (b) A member other than a director may, upon reasonable notice to the directors, inspect any books, records or documents of the Company, provided the information obtained is only used for a proper purpose in connection with membership of the Company. In the case of directors' minutes and resolutions, the directors may, at their complete discretion, refuse to provide all or some of the directors' minutes or provide such records in a redacted form.

11 Public Fund

11.1 Applicability

This rule 11 sets out the rules for the Public Fund established under rule 11.2(a) and only applies if the Company is listed on the Register of Cultural Organisations administered by the Department and for so long as it is required by law.

11.2 Establishing and operation of Public Fund

- (a) The Company will establish and maintain a public fund for its purposes and activities in Australia to be called “Opera Australia Fund” (or such other name as is decided by the directors and notified to the Department) (**Public Fund**).
- (b) Donations will be:
 - (i) deposited into the Public Fund listed on the Register of Cultural Organisations;
 - (ii) kept separate from other funds of the Company; and
 - (iii) used only to further the Charitable Purpose of the Company.
- (c) Investment of monies in the Public Fund will be made in accordance with guidelines for public funds as specified by the Australian Tax Office.
- (d) The public will be invited to contribute to the Public Fund.
- (e) The Public Fund will be administered by a management committee or a subcommittee of the management committee, the majority of whom, because of their tenure or some public office or their professional standing, have an underlying community responsibility, as distinct from obligations solely in regard to the cultural objectives of the Company.
- (f) No monies or assets in the Public Fund will be distributed to members or officers of the Company, except as:
 - (i) reimbursement of out-of-pocket expenses incurred on behalf of the Public Fund; or
 - (ii) proper remuneration for administrative services.

11.3 Amendments or alterations to the Public Fund

The Company must notify the Department if the Company proposes to amend or alter the provisions relating to the Public Fund, to assess the effect of any amendments on the Public Fund’s continuing DGR status.

11.4 Receipts for gifts

Receipts for gifts to the Public Fund must state:

- (a) the name of the Public Fund and that the receipt is for a gift made to the Public Fund;
- (b) the Australian Business Number of the Public Fund;

- (c) the fact that the receipt is for a gift; and
- (d) any other matter required to be included on the receipt pursuant to the requirements of the Income Tax Assessment Act.

11.5 Register of Cultural Organisations requirements

The Company must:

- (a) comply with any rules that the Treasurer or the Minister for the Arts makes to ensure that gifts made to the Public Fund will only be used for the Charitable Purpose; and
- (b) every six months, provide to the Department statistical information on the gifts made to the Public Fund.

11.6 Winding up, dissolution or loss of DGR endorsement – public fund

If upon the winding up, dissolution or revocation of the DGR endorsement of the Public Fund listed on the Register of Cultural Organisations, there remains after satisfaction of all its debts and liabilities, any property or funds, the property and funds shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other fund, authority or institution, as determined by the directors, having similar objects to the Public Fund, and whose rules shall prohibit the distribution of its or their income among its or their members, such fund, authority or institution to be eligible for tax deductibility of donations under Subdivision 30-B, section 30-100, of the Income Tax Assessment Act and listed on the Register of Cultural Organisations.

11.7 Change in fund requirements

Notwithstanding the requirements set out in this rule 11, the Public Fund will be maintained and operated in a manner which complies with the legislative and administrative requirements which apply from time to time for the maintenance and operation of a public fund under the Income Tax Assessment Act.

12 Winding up

12.1 Winding up of the Company

- (a) Before the Company is wound up, it must first wind up the Public Fund and distribute any property or funds remaining after satisfaction of all its debts and liabilities, in accordance with rule 11.6.
- (b) Subject to 12.1(a), if upon the winding up or dissolution of the Company there remains, after satisfaction of all of its debts and liabilities, any property or moneys whatsoever (**Surplus Assets**), such Surplus Assets must not be given or distributed to members and must instead be given or distributed to one or more Eligible Recipients.
- (c) The decision as to which Eligible Recipient is (or which Eligible Recipients are) to be given the Surplus Assets under rule 12.1(b) is to be determined:
 - (i) by a resolution of the directors at or before the winding up or dissolution of the Company;

- (ii) if no such directors' resolution is passed, by a resolution of the members at or before the winding up or dissolution of the Company; or
 - (iii) if no such resolution is passed by the directors or the members, by the Court.
- (d) Any part of the Surplus Assets consisting of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.

12.2 Loss of DGR endorsement – Entity

- (a) If the Company is endorsed as a DGR as a whole and this endorsement is revoked (whether or not the Company is to be wound up), then the Company must ensure that the following assets remaining after the payment of all liabilities are distributed to one or more Eligible Recipients:
- (i) gifts of money or property received for the Charitable Purpose;
 - (ii) contributions made in relation to a fundraising event held to raise funds for the Charitable Purpose; and
 - (iii) money received by the Company because of such gifts and contributions.
- (b) References to “contributions” and “fundraising event” in this rule 12.2 have the same meaning as in Division 30 of the Income Tax Assessment Act.

13 Indemnity and insurance

13.1 Persons to whom rules 13.2 and 13.4 apply

Rules 13.2 and 13.4 apply:

- (a) to each person who is or has been a director or Secretary of the Company;
- (b) to such other officers or former officers of the Company as the directors in each case determine; and
- (c) if the directors so determine, to any auditor or former auditor of the Company.

13.2 Indemnity

The Company must indemnify, to the extent permitted by law, each person to whom this rule 13.2 applies for all losses or liabilities incurred by the person as an officer or, if the directors so determine, an auditor of the Company including, but not limited to, a liability for negligence and for the person's reasonable legal costs on a full indemnity basis.

13.3 Extent of indemnity

This indemnity:

- (a) is a continuing obligation and is enforceable by a person to whom rule 13.2 applies even though that person may have ceased to be an officer or auditor of the Company;

- (b) covers only losses or liabilities incurred by the person as an officer or auditor of the Company (either before or after the adoption of this rule);
- (c) does not cover any loss or liability of the person seeking to be indemnified under this rule if that loss or liability arises from that person's wilful misconduct or fraud; and
- (d) operates only to the extent that the loss or liability is not paid by insurance.

13.4 Insurance

- (a) The Company may, to the extent permitted by law:
 - (i) purchase and maintain insurance; or
 - (ii) pay or agree to pay a premium for insurance,

for any person to whom this rule 13 applies against any liability incurred by the person as an officer or auditor of the Company including, but not limited to, a liability for negligence and for legal costs.

13.5 Savings

Nothing in rule 13.2 or 13.4:

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

13.6 Contracts

To the extent permitted by law, the Company may enter into an agreement (including a deed) with a person who is or agrees to become or has been an officer of the Company on any terms and conditions that the directors think fit to give effect to the rights of that person under this rule 13. Any such agreement may also give the person rights to inspect and obtain copies of the books of the Company for the purposes, and on such other terms and conditions, as the directors decide.

14 Notices

14.1 Notices by the Company to members

- (a) A notice may be given by the Company to a member:
 - (i) in person;
 - (ii) by posting it to, or leaving it at, the member's address as shown in the register of members or an alternative address (if any) nominated by the member for service of notices;
 - (iii) by sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);

- (iv) by sending it to the fax number nominated by the member as an alternative address for service of notices (if any); or
 - (v) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- (b) The fact that a member has supplied an email or other electronic address or fax number for the giving of notices does not require the Company to give any notice to that person by electronic mail or fax.
 - (c) A certificate signed by a director or Secretary to the effect that a notice has been given in accordance with this Constitution is conclusive evidence of that fact.

14.2 Notices by the Company to directors

Subject to this Constitution, a notice may be given by the Company to any director:

- (a) in person;
- (b) by posting it to, or leaving it at, the address nominated by the director for the service of notices;
- (c) by sending it to the email or other electronic address nominated by the director for the service of notices;
- (d) by sending it to the fax number nominated by the director for the service of notices; or
- (e) by notifying the director at an email or other electronic address nominated by the director, that the notice is available at a specified place or address (including an electronic address).

14.3 Notices to the Company

Subject to this Constitution, a notice may be given by a member or director to the Company by:

- (a) delivering it to the Company's registered office;
- (b) posting it to the Company's registered office;
- (c) sending it to an email address or other electronic address notified by the Company to the members as the Company's email address or other electronic address; or
- (d) sending it to the fax number notified by the Company to the members as the Company's fax number.

14.4 Time of service

- (a) A notice:
 - (i) delivered in person, or left at the recipient's address, is taken to be served on the day it is delivered;
 - (ii) sent by post, is taken to be served on the third day after it is posted with the correct payment of postage costs;

- (iii) sent by email, fax or other electronic method, is taken to be served on the day after it is sent; and
 - (iv) given under clause 14.1(a)(v) or 14.2(e), is taken to be served on the day after the notification that the notice is available is sent.
- (b) If service 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 Business Day.

14.5 Other communications and documents

Rules 14.1 to 14.4 (inclusive) apply, so far as they can and with necessary changes, to the service of any communication or document.

14.6 Notices in writing

A reference in this Constitution to a notice in writing includes a notice given by email, fax or another form of written communication.

14.7 Waiving the right to notice

- (a) A member may waive their right to notices to one or all meetings by notifying the Company to that effect in person or by post, telephone, fax or other technological means.
- (b) If the Company does not have an address, fax number or electronic mail address for the member, the Company is not required to give notice to the member.

15 General

15.1 Common seal

The Company may, but is not required to, have and use a common seal. If the directors determine that the Company will have a common seal, then it must be kept and used in accordance with law.

15.2 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State of New South Wales, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

1 Dictionary

In this Constitution:

ACNC Act means the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth).

Board means the board of directors of the Company.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Sydney, Australia.

Charitable Purpose has the meaning given in rule 2.1.

Company means Opera Australia ACN 000 755 153.

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

Department means the Commonwealth Government department responsible for the administration of the Register of Cultural Organisations.

DGR means a deductible gift recipient, within the meaning of the Income Tax Assessment Act.

Eligible Recipient means an organisation that:

- (a) has charitable objects or purposes similar to the Charitable Purpose;
- (b) has a governing document which requires its income and property to be applied in promoting its objects and agrees to use any distribution provided to it by the Company to further such objects or purposes;
- (c) is registered as a charity with the Australian Charities and Not-for-Profits Commission;
- (d) by law or its constituent rules, is prohibited from distributing, and does not distribute, its income and property amongst its members (either while it is operating or upon winding up) to an extent at least as great as is imposed upon the Company; and
- (e) if the Company is endorsed as a DGR for the purpose of any Australian federal tax law, is similarly endorsed as a DGR.

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

Member Expulsion Resolution has the meaning given in rule 6.3(a).

Membership Policy has the meaning given in rule 5.1(e).

New Operatic Works means new operas, musical theatre, music or any other art or performance.

OACF means the Opera Australia Capital Fund.

Opera means opera, musical theatre, music and any other art or performance.

Public Fund has the meaning given in rule 11.2(a).

Register of Cultural Organisations means the Register of Cultural Organisations established under Subdivision 30-F of the Income Tax Assessment Act.

Secretary means a person appointed under rule 9.

Special Resolution means a resolution that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

Surplus Assets has the meaning given in rule 12.1(b).

2 Interpretation

2.1 General

- (a) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (b) In this Constitution, headings are for convenience only and do not affect the interpretation of this Constitution and, unless the contrary intention appears:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words importing a gender include every other gender;
 - (iii) words used to denote persons generally include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
 - (iv) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (v) the words “including”, “such as”, “for example” and the like are not, and should not be interpreted to be, words of limitation, unless explicitly stated otherwise; and
 - (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (c) A requirement in this Constitution for something to be carried out in writing will be satisfied if the matter in question is carried out in some other lawful manner that is approved by the directors.
- (d) In this Constitution, where communication from a member to the Company must be “signed” by a member, in addition to any other methods permitted by law, the member may sign in any manner that allows the directors to be satisfied, acting reasonably, that the communication is from the relevant member, including by using an electronic signature.
- (e) “Writing” or “written” includes modes of representing or reproducing words, figures, drawings or symbols in a visible or tactile form which renders the message retrievable by people who know the language in question.

2.2 Replaceable rules not to apply

The replaceable rules contained in the Corporations Act from time to time do not apply to the Company.