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**CONSTITUTION**  
**OF**  
**DARWIN SYMPHONY ORCHESTRA INCORPORATED.**

**PART 1 – PRELIMINARY**

**1. Name**

The name of the incorporated association ("the Association") is Darwin Symphony Orchestra Inc.

**2. Objects and purposes**

The objects and purposes of the Association are as follows:

- (a) To raise funds and resources to support the Orchestra to enable, assist and promote it in performing for audiences in Darwin and throughout the Northern Territory;
- (b) to offer quality orchestral musical experiences to musicians through performance, thereby creating an environment in which they can achieve their fullest potential;
- (c) to foster and promote the understanding, appreciation and enjoyment of orchestral music in the cultural life of the Northern Territory; and
- (d) to provide opportunity for training and skills development in all aspects of musicianship.

**3. Minimum number of members**

The Association must have at least 20 members.

**4. Definitions**

In this Constitution, unless the contrary intention appears –

"Act" means the *Associations Act* and regulations made under that Act;

“Artistic Director” means the artistic director appointed by the Board;

"Board" means the Management Board of the Association;

"financial institution" means an authorised deposit-taking institution within the meaning of section 5 of the *Banking Act 1959* of the Commonwealth;

"general meeting" means a general meeting of members convened in accordance with clause 44;

"Honorary Member" means a member of the Association so described in clauses 9 and 18;

"Life Member" means a member of the Association so described in clauses 9 and 18;

"member" means a member of the Association who has been nominated and accepted in accordance with clause 9;

"Orchestra" means the Darwin Symphony Orchestra;

"Ordinary Member" means a member of the Association so described in clause 9.

"Player Member" means a member of the Association so described in clause 9;

"register of members" means the register of the Association's members established and maintained under section 34 of the Act;

"Returning Officer" means the returning officer appointed by the Board.

"special resolution" means a resolution notice of which is given under clause 47 and passed in accordance with section 37 of the Act.

## **PART 2 – CONSTITUTION AND POWERS OF ASSOCIATION**

### **5. Powers of Association**

- (1) For achieving its objects and purposes, the Association has the powers conferred by sections 11 and 13 of the Act.
- (2) Subject to the Act, the Association may do all things necessary or convenient for carrying out its objects or purposes, and in particular, may –
  - (a) acquire, hold and dispose of real or personal property;

- (b) open and operate accounts with financial institutions;
- (c) invest its money in any security in which trust monies may lawfully be invested;
- (d) raise and borrow money on the terms and in the manner it considers appropriate;
- (e) secure the repayment of money raised or borrowed, or the payment of a debt or liability;
- (f) appoint agents and or employ people to transact business on its behalf; and
- (g) enter into any other contract it considers necessary or desirable.

**6. Effect of Constitution**

This Constitution binds every member and the Association to the same extent as if every member and the Association had signed and sealed this Constitution and agreed to be bound by it.

**7. Inconsistency between Constitution and Act**

If there is any inconsistency between this Constitution and the Act, the Act prevails.

**8. Altering the Constitution**

The Association may alter this Constitution by special resolution but not otherwise. If the Constitution is altered, the public officer must ensure compliance with section 23 of the Act.

**PART 3 – MEMBERS**

*Division 1 – Membership*

**9. Application for membership**

- (1) There shall be four classes of members of the Association:
  - (a) Ordinary Members,
  - (b) Player Members,

- (c) Honorary Members,
  - (d) Life Members.
- (2) To apply to become a member of the Association a person must –
- (a) submit a written application for membership to the Board –
    - (i) in a form approved by the Board which must specify:
      - (A) the class of membership applied for;
      - (B) the manner in which the applicant meets any membership criteria as may be specified in this Constitution or as may otherwise be required by the Board from time to time; and
    - (C) where the applicant is a body corporate, include the nomination (which may be altered from time to time by written notice to the Association) of an individual natural person to represent the applicant and that person alone shall be able to represent, act on behalf of and exercise membership rights of such member, including but not limited to election to the Board; and
    - (ii) be signed by the person and the member referred to in paragraph (b);
  - (b) be proposed by one member .
- (3) To be eligible to apply to become a Player Member a person must:
- (a) be appointed by the Artistic Director as a player in the Orchestra;
  - (b) submit a written application for membership to the Board in accordance with paragraph (2).

#### **10. Approval of Board**

- (1) The Board must consider any application made under clause 9(2) or 9(3) and must accept or reject the application.
- (2) If an application is rejected, the applicant may appeal against the decision by giving notice to the Secretary within 14 days after being advised of the rejection.

- (3) If an applicant gives notice of an appeal against the rejection of their application, the Board must reconsider the application at the next Board meeting after receipt of the notice of appeal.
- (4) If after reconsidering an application the Board reaffirms its decision to reject the application, the decision is final.

#### **11. Joining fee**

- (1) If an application for membership is approved by the Board, the applicant becomes a member on payment of the joining fee.
- (2) The joining fee is either –
  - (a) a pro rata annual fee based on the remaining part of the financial year; or
  - (b) the amount determined from time to time by the Board.

#### **12. Annual membership fees**

- (1) The annual membership fee is the amount determined from time to time by the Board.
- (2) In determining the annual membership fee, the Board may differentiate between members on any other grounds the Board considers appropriate, including but not limited to grounds that the members are full time students or minors.
- (3) Each member must pay the annual membership fee to the Association by the first day of each financial year or another date determined by the Board from time to time.
- (4) A member whose membership fee is not paid within 3 months after the due date ceases to be a member unless the Board determines otherwise.

#### ***Division 2 – Rights of members***

#### **13. General**

- (1) Subject to clause 14(2), a member may exercise the rights of membership when their name is entered in the register of members.
- (2) A right of membership of the Association –

- (a) is not capable of being transferred or transmitted to another person; and
  - (b) terminates on the cessation of membership whether by death, resignation or otherwise.
- (3) Any member may apply to the Board for leave of absence for a defined period. Notwithstanding this, the member shall forego any voting rights or membership entitlements for the duration of their absence

**14. Voting**

- (1) Subject to subclause (2) and clause 18, each member has one vote at general meetings of the Association.
- (2) A member is not eligible to vote until 10 working days after their application for membership has been approved by the Board.

**15. Notice of meetings and special resolutions**

The Secretary must give all members notice of general meetings and special resolutions in the manner and time prescribed by this Constitution.

**16. Access to information on Association**

The following must be available for inspection by members:

- (a) a copy of this Constitution;
- (b) minutes of general meetings;
- (c) annual reports and annual financial reports.

**17. Raising grievances and complaints**

- (1) A member may raise a grievance or complaint about a Board member, the Board or another member of the Association.
- (2) The grievance or complaint must be dealt with by the procedures set out in Part 8.

**18. Honorary/Life Members**

- (1) The Board may, at its discretion, permit such other persons as it determines to be Honorary Members for a period determined by the

Board and on such terms and conditions deemed appropriate by the Board from time to time.

- (2) The Board may elect persons to be Life Members, on terms and conditions deemed appropriate by the Board from time to time:
- (3) Honorary Members and Life Members shall be entitled to receive such benefits as the Board may from time to time determine
- (4) The Board may cancel the membership of any Honorary or Life Member in accordance with the provisions in paragraph 21 and subject to the right of appeal set out in paragraph 22.

### ***Division 3 – Termination, death, suspension and expulsion***

#### **19. Termination of membership**

Membership of the Association may be terminated by –

- (1) a notice of resignation from the member, addressed and posted to the Association or given personally to the Secretary or another Board member;
- (2) non-payment of the annual membership fee within the time allowed under clause 12(3); or
- (3) expulsion in accordance with this Division.

#### **20. Death of member or uncontactable**

If a member dies or does not respond to any communications requiring a response for a period exceeding 6 months the Board may cancel the member's membership.

#### **21. Suspension or expulsion of members**

- (1) If the Board considers that a member should be suspended or expelled because his or her conduct is detrimental to the interests of the Association, the Board must give notice of the proposed suspension or expulsion to the member.
- (2) The notice must –
  - (a) be in writing and include –

- (i) the time, date and place of the Board meeting at which the question of that suspension or expulsion will be decided; and
  - (ii) the particulars of the conduct; and
- (b) be given to the member not less than 30 days before the date of the Board meeting referred to in paragraph (a) (i) .
- (3) At the meeting, the Board must afford the member a reasonable opportunity to be heard or to make representations in writing.
- (4) The Board may suspend or expel or decline to suspend or expel the member from the Association and must give written notice of the decision and the reason for it to the member.
- (5) Subject to clause 22, the decision to suspend or expel a member takes effect 14 days after the day on which notice of the decision is given to the member.
- (6) On advice from the Artistic Director, the Board may convert a player member's membership to member if they, without notice to the Artistic Director or Orchestra Manager, fail to participate as a player in the Orchestra for a period of 6 weeks.

**22. Appeals against suspension, expulsion or conversion of membership**

- (1) A member who is suspended, expelled or whose Player Membership is converted to that of an Ordinary member under clause 21 may appeal against that decision by giving notice to the Secretary within 14 days after receipt of the Board's decision.
- (2) The appeal must be considered at a general meeting of the Association and the member must be afforded a reasonable opportunity to be heard at the meeting or to make representations in writing prior to the meeting for circulation at the meeting.
- (3) The members present at the general meeting must, by resolution, either confirm or set aside the decision of the Board to suspend or expel the member or convert the membership.
- (4) The member is not suspended or does not cease to be a member or a Player Member until the decision of the Board to suspend or expel or convert their membership is confirmed by a resolution of the members.

## **PART 4 – THE BOARD**

### ***Division 1 – General***

#### **23. Role and powers**

- (1) The business of the Association must be managed by or under the direction of the Board.
- (2) The Board may exercise all the powers of the Association except those matters that the Act or this Constitution requires the Association to determine through a general meeting of members.
- (3) The Board may appoint and specify the powers and duties of a suitably competent employee to further the objectives of the Association.
- (4) The Board may establish one or more sub-committees with terms of reference, consisting of the members of the Association the Board considers appropriate.
- (5) The Board may make rules, policies and procedures, not inconsistent with this Constitution or the Act, relating to the conduct and activities of persons who play in or otherwise assist or participate in the activities of the Orchestra.

#### **24. Composition of Board**

- (1) The Board consists of –
  - (a) a Chairperson elected by the members;
  - (b) a Vice Chairperson elected by the members;
  - (c) a Secretary elected by the members;
  - (d) three (3) Board members, at least one of whom shall be a Player Member, elected by the members;
  - (e) a Treasurer who will be appointed by the Board and who may or may not be a member;

- (f) Two (2) members appointed by the Board.
- (2) The office holders of the Association will be:
  - (a) the Chairperson elected by the members;
  - (b) the Vice-Chairperson elected by the members;
  - (c) the Secretary elected by the members;
  - (d) the Treasurer appointed by the Board pursuant to sub-clause 24(1)(c).
- (3) The Board must appoint a Public Officer. The Board may remove and replace the appointed person at any time without cause.
- (4) Board members shall not receive compensation or payment for their service on the Board, provided that Board members can be paid reasonable out-of-pocket expenses which have been approved by the Board.

**25. Delegation**

- (1) The Board may delegate to a sub-committee or staff any of its powers and functions other than –
  - (a) this power of delegation; or
  - (b) a duty imposed on the Board by the Act or any other law.
- (2) The delegation must be in writing and may be subject to the conditions and limitations the Board considers appropriate.
- (3) The Board may, in writing, revoke wholly or in part the delegation.

***Division 2 – Tenure of office***

**26. Eligibility of Board members**

- (1) A Board member must be a member who is 18 years or over.
- (2) Board members must be elected to the Board at an annual general meeting or appointed under clause 24 or clause 33.

**27. Nominations for election to Board**

- (1) A member is not eligible for election to the Board unless the Secretary receives a written nomination for that member by another

member not less than 7 days before the date of the next general meeting.

- (a) In the case of a Player Member, the nominator, and member nominating must each be a Player Member; and
  - (b) In the case of all other elected positions, the nominator, seconder and member nominating may be any member of the Association.
- (b) The nomination must include a description ( of no more than 1 page) as to how the nominee says they have the necessary skills and experience to be a member of the Board (informed by the Association’s strategic plan) and be signed by –
- (a) the nominator and
  - (b) the nominee to signify their willingness to stand for election.
- (c) A person who is eligible for election or re-election under this clause may –
- (a) propose them self for election or re-election; and
  - (b) vote for them self.

**28. Retirement of Board members**

- (1) A Board member holds office for their term unless the member vacates the office under clause 31 or is removed under clause 32.
- (2) At each annual general meeting two of the Board Members must retire The two Board Members who must retire at each annual general meeting will be the Board Members who have been longest in office since last elected. Where members were elected on the same day, the members to retire will be decided by lot unless they agree otherwise. The outgoing Chairperson must preside at the annual general meeting until a new member is appointed as Chairperson.
- (3) A member’s term of office commences at the annual general meeting at which they were elected and ends at the annual general meeting which occurs three years later and/or any adjournment thereof. The term of office for a member appointed under clause, 24 (1) (f) or 33 (1), will start at their commencement date and end at the next annual general meeting.

- (4) A Board Member who retires under clause 28 (2) may nominate for re-election provided the Board Member has not held office for a continuous period of nine years or more. Each Board Member must retire at least once every three years.

**29. Election by default**

- (1) If the number of persons nominated for election to the Board under clause 27 does not exceed the number of vacancies to be filled, the Returning Officer must declare the persons to be duly elected as members of the Board at the annual general meeting.
- (2) If vacancies remain on the Board after the declaration under subclause (1), additional nominations of Board members may be accepted from the floor of the annual general meeting.
- (3) If the nominations from the floor do not exceed the number of remaining vacancies, the Returning Officer must declare those persons to be duly elected as members of the Board.
- (4) If the nominations from the floor are less than the number of remaining vacancies, the unfilled vacancies are taken to be casual vacancies and must be filled by the new Board in accordance with clause 33.

**30. Election by ballot**

- (1) If the number of nominations exceeds the number of vacancies on the Board, ballots for those positions must be conducted.
- (2) The ballot must be conducted by the Returning Officer in a manner determined from time to time by the Board.
- (3) The members chosen by ballot must be declared by the Returning Officer to be duly elected as members of the Board.

**31. Vacating office**

The office of a Board member becomes vacant if –

- (a) the member –

- (i) is disqualified from being a Board member under section 30 or 40 of the Act;
  - (ii) resigns by giving written notice to the Board;
  - (iii) dies or is rendered permanently incapable of performing the duties of office by mental or physical ill-health; or
  - (iv) ceases to be a member of the Association;
- (b) the member is absent from more than –
- (i) 3 consecutive Board meetings without tendering an apology;
  - (ii) 3 Board meetings in the same financial year without tendering an apology to the Chairperson;
- of which meetings the member received notice and the Board has resolved to declare the office vacant.

### **32. Removal of Board member**

- (1) The Board may remove any Board member before the member's term of office ends.
- (2) A Board Member who is suspended, expelled or whose Player Membership is converted to that of an Ordinary member under clause (32) (1) may appeal against that decision by giving notice to the Secretary within 14 days after receipt of the decision.
- (3) The appeal must be considered at a general meeting of the Association and the Board Member must be afforded a reasonable opportunity to be heard at the meeting or to make representations in writing prior to the meeting for circulation at the meeting.
- (4) The members present at the general meeting must, by resolution, either confirm or set aside the decision of the Board to suspend or expel the member or convert the membership.
- (5) The member is not suspended or does not cease to be a member or a Player Member until the decision of the Board to suspend or expel them or convert their membership is confirmed by a resolution of the members.

- (6) If a vacancy arises through removal of an Elected Board member under subclause (1), an election must be held to fill the vacancy (in accordance with clauses 27,29 and 30).

### **33. Filling casual vacancy on Board**

- (1) If a vacancy remains on the Board after the application of clause 29 or if the office of a Board member becomes vacant under clause 31, the Board may appoint any member to fill that vacancy. The maximum term for such appointment shall be until the next annual general meeting.
- (2) If the office of public officer becomes vacant, the Board must, within 14 days after the vacancy arises, appoint a person to be the public officer.

### ***Division 3 – Duties of Board members***

### **34. Collective responsibility of Board**

- (1) As soon as practicable after being elected to the Board, each Board member must become familiar with the Act and regulations made under the Act.
- (2) The Board is collectively responsible for ensuring the Association complies with the Act and regulations made under the Act.

### **35. Chairperson and Vice-Chairperson**

- (1) Subject to subclauses (2) and (3), the Chairperson must preside at all general meetings and Board meetings.
- (2) If the Chairperson is absent from a meeting, the Vice-Chairperson must preside at the meeting.
- (3) If the Chairperson and the Vice-Chairperson are both absent, the presiding member for that meeting must be –
  - (a) a member elected by the other members present physically or via any media means, if it is a general meeting; or
  - (b) a Board member elected by the other Board members present physically or via any media means, if it is a Board meeting.

### **36. Secretary**

The Secretary is to: –

- (a) ensure minutes of all proceedings of general meetings and of Board meetings are kept in accordance with section 38 of the Act;
- (b) ensure the registers of Board members, Ordinary members and Player members are maintained in accordance with section 34 of the Act;
- (c) perform any other duties imposed by this Constitution and/or as directed by the Board.

**37. Treasurer**

The Treasurer is to:

- (a) ensure the accounting records of the Association are kept in accordance with section 41 of the Act;
- (b) coordinate the preparation of the Association's annual statement of accounts;
- (c) perform any other duties imposed by this Constitution and/or as directed by the Board.

**38. Public Officer**

- (1) The public officer is to ensure that documents are filed with the Commissioner of Consumer Affairs in accordance with the Act.
- (2) The public officer is to keep a current copy of the Constitution of the Association.

**PART 5 – MEETINGS OF THE BOARD**

**39. Frequency and calling of meetings**

- (1) The Board must meet together for the conduct of business not less than 4 times in each financial year.
- (2) The Chairperson, or at least half the Board members, may at any time convene a meeting of the Board.

- (3) A Board meeting may be convened to deal with an appeal under clause 22.
- (4) The Board Members may pass a resolution without holding a meeting, via a written circular motion. To be passed, such circular resolution must be approved in writing by 50% plus 1 of all Board Members.

**40. Voting and decision making**

- (1) Each Board member present, physically or via any media means, at the meeting has a deliberative vote.
- (2) A question arising at a Board meeting must be decided by a majority of votes.
- (3) If there is no majority, the person presiding at the meeting has a casting vote in addition to a deliberative vote.

**41. Quorum**

For a Board meeting, five (5) Board members constitute a quorum.

**42. Procedure and order of business**

- (1) The procedure to be followed at a Board meeting must be determined from time to time by the Board.
- (2) The order of business may be determined by the Board members present physically, or via any media means, at the meeting.

**43. Disclosure of interest**

- (1) A Board member who has a direct or indirect pecuniary interest in a contract, or proposed contract, with the Association must disclose the nature and extent of the interest to the Board in accordance with section 31 of the Act.
- (2) The Secretary must record the disclosure in the minutes of the meeting.
- (3) The Chairperson must ensure a Board member who has disclosed a direct or indirect pecuniary interest in a contract, or proposed contract, complies with section 32 of the Act.

## PART 6 – GENERAL MEETINGS

### 44. Convening general meetings

- (1) The Association must hold its first annual general meeting within 6 months after the end of the Association's financial year. The Association may arrange for members to attend and participate in a general meeting physically or via any media means as deemed appropriate by the Board.
- (2) The Association must hold all subsequent annual general meetings within 5 months after the end of the Association's financial year.
- (3) The Board –
  - (a) may at any time convene a special general meeting;
  - (b) must, within 30 days after the Secretary receives a notice under clause 22(1), convene a special general meeting to deal with the appeal to which the notice relates; and
  - (c) must, within 30 days after it receives a request under clause 45(1), convene a special general meeting for the purpose specified in that request.

### 45. Special general meetings

- (1) Half the number of members constituting a quorum for a general meeting may make a written request to the Board for a special general meeting.
- (2) The request must –
  - (a) state the purpose of the special general meeting; and
  - (b) be signed by the members making the request.
- (3) If the Board fails to convene a special general meeting within the time allowed –
  - (a) the members who made the request may convene a special general meeting as if they were the Board.
- (4) The Association must meet any reasonable expenses of convening and holding the special general meeting.

- (5) The Secretary must give to all members not less than 21 days notice of a special general meeting.
- (6) The notice must specify –
  - (a) when and where the meeting is to be held, including the process for attending via any media means, as deemed appropriate by the Board and:
  - (b) the order in which business is to be transacted.

**46. Annual general meeting**

- (1) The Secretary must give to all members not less than 14 days notice of an annual general meeting.
- (2) The notice must specify –
  - (a) when and where the meeting is to be held, including process for attending via any media means as deemed appropriate by the Board and:
  - (b) the order in which business is to be transacted.
- (3) The order of business for each annual general meeting is as follows:
  - (a) first – the consideration of the accounts and reports of the Board;
  - (b) second – the election of new Board members;
  - (c) third – any other business requiring consideration by the Board or any member and written notice of which has been given to the Secretary for notification to the members in conjunction with the notice of meeting to be given under sub-clause 46(1), at least twenty one (21) days prior to the meeting

**47. Special resolutions**

- (1) A special resolution may be moved at any general meeting of the Association.
- (2) The Secretary must give all members not less than 21 days notice of the meeting at which a special resolution is to be proposed.
- (3) The notice must include the resolution to be proposed and the intention to propose the resolution as a special resolution.

**48. Notice of meetings**

- (1) The Secretary must give a notice under this Part by –
  - (a) serving it on a member personally;
  - (b) sending it by post to a member at the address of the member appearing in the register of members;
  - (c) sending it by electronic mail to a member at the electronic mail address of the member appearing in the register of members.
  
- (2) If a notice is sent by post under subclause (1) (b), sending of the notice is taken to have been properly affected if the notice is addressed and posted to the member by ordinary prepaid mail. If a notice is sent by electronic mail under subclause (1) (c), sending of the notice is taken to have been properly affected if the sender does not receive a notice of error in transmission within 24 hours of sending the notice.

**49. Quorum at general meetings**

At a general meeting, at least 15 members must be present physically or via any media means as approved by the Board to constitute a quorum.

**50. Lack of quorum**

- (1) If within 30 minutes after the time specified in the notice for the holding of a general meeting a quorum is not present –
  - (a) for an annual general meeting or special general meeting convened under clause 44(3)(a) – the meeting stands adjourned to the same time on the same day in the following week and to the same place;
  - (b) for a meeting convened under clause 44(3)(b) – the members who are present in person or by proxy may proceed with hearing the appeal for which the meeting is convened; or
  - (c) for a meeting convened under clause 44(3)(c) – the meeting lapses.
  
- (2) If within 30 minutes after the time appointed by subclause (1)(a) for the resumption of an adjourned general meeting a quorum is not

present, the members who are present in person or by proxy may proceed with the business of that general meeting as if a quorum were present.

- (3) The Chairperson may, with the consent of a general meeting at which a quorum is present, and must, if directed by the members at the meeting, adjourn that general meeting from time to time and from place to place.
- (4) There must not be transacted at an adjourned general meeting any business other than business left unfinished or on the agenda at the time when the general meeting was adjourned.
- (5) If a general meeting is adjourned for a period of 30 days or more, the Secretary must give notice of the adjourned general meeting as if that general meeting were a fresh general meeting.

## **51. Voting**

- (1) Subject to clauses 14(2) and 18, each member present in person, physically or via any media means approved by the Board, or by proxy at a general meeting is entitled to a deliberative vote.
- (2) At a general meeting –
  - (a) an ordinary resolution put to the vote is decided by a majority of votes made in person or by proxy; and
  - (b) a special resolution put to the vote is passed if three-quarters of the members who are present, physically or via any media means approved by the Board or by proxy vote in favour of the resolution.
- (3) A poll may be demanded by the Chairperson or by 3 or more members present, physically or via any media means approved by the Board, or by proxy.
- (4) If demanded, a poll must be taken immediately and in the manner the Chairperson directs. If some members are attending by an approved media means the Chairperson must ensure that such persons are given an opportunity to participate in such poll.

## **52. Proxies**

A member may appoint in writing another member to be the proxy of the appointing member to attend and vote on behalf of the appointing member at any general meeting.

## **PART 7 – FINANCIAL MANAGEMENT**

### **53. Financial year**

The financial year of the Association is the period of 12 months ending on 31 December.

### **54. Funds and accounts**

- (1) The Association must open an account with a financial institution from which all expenditure of the Association is made and into which all of the Association's revenue is deposited.
- (2) The Board may approve expenditure on behalf of the Association within the limits of the budget.
- (3) Unless the Board resolves otherwise all payments or withdrawals including electronic must be authorised by two persons approved by the Board.
- (4) All funds of the Association must be deposited into the financial account of the Association no later than 5 working days after receipt or as soon as practicable after that day.
- (5) No part of the funds of the Association shall be paid to or distributed to members of the Association, Board members, officers or employees of the Association provided that the Association shall be authorised and empowered to make payment in good faith of:
  - (a) reasonable and proper remuneration to any member, officer or employee in return for any services actually rendered to the Association; and
  - (b) reasonable out-of-pocket expenses to Board members pursuant to clause 24(4).

### **55. Public Fund**

- (1) The Association shall establish and maintain a public fund to receive donations from the public.

- (2) The Association will apply to be registered as a “cultural organisation” under section 30-300 of the *Income Tax Assessment Act 1997* (Cth).
- (3) The Association shall ensure that:
  - (a) donations, gifts and deductible contributions will be:
    - (i) deposited into the Association’s public fund.
    - (ii) kept separate from any other funds of the Association;
    - (iii) used solely to further the principal purpose of the Association;
  - (b) investment of monies in this fund will be:
    - (i) made in accordance with guidelines for public funds as specified by the Australian Taxation Office;
    - (ii) administered by a management committee, the majority of whom, because of their tenure of some public office of their professional standing, have an underlying community responsibility, as distinct from obligations solely in regard to the cultural objectives of the Association;
  - (c) no monies or assets in this fund will be distributed to members or office holders of the Association, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services;
  - (d) the department responsible for the administration of the Register of Cultural Organisations will be notified of any proposed amendments or alterations to provisions for the public fund, to assess the effect of any amendments on the public fund’s continuing Deductible Gift Recipient status;
  - (e) receipts for gifts to the public fund state:
    - (i) the name of the public fund and that the receipt is for a gift made to the public fund;
    - (ii) the Australian Business Number of the Association;
    - (iii) the fact that the receipt is for a gift; and

- (iv) any other matter required to be included on the receipt pursuant to the requirements of *the Income Tax Assessment Act 1997*;
  - (f) it complies with the appropriate requirements of any responsible Commonwealth Government Minister in respect of gifts to the public fund or the requirements of *the Income Tax Assessment Act 1997*.
- (4) If the Association determines to wind up the public fund, and on such winding up or dissolution, and after satisfaction of all debts and liabilities relating to the public fund, there remain any assets, the surplus assets:
- (a) must not be retained by the Association or distributed to the members or former members; and
  - (b) must be given or transferred to another organisation, association, authority or institution that:
    - (i) has similar objects or purposes;
    - (ii) is not carried on for profit or gain to its individual members and whose rules prohibit the distribution of its income among its members;
    - (iii) is eligible for tax deductibility of donations under Subdivision 30-B, section 30-100 of the Income Tax Assessment Act 1997 and is listed on the Register of Cultural Organisations maintained under that Act; and
    - (iv) is determined by resolution of the members.

## **56. Accounts and audits**

The responsibility of the Board under clause 34(2) for ensuring compliance with the Act includes meeting the requirements of Part 5 of the Act and regulations made for that Part relating to –

- (a) the keeping of accounting records;
- (b) the preparation and presentation of the Association's annual statement of accounts; and
- (c) the auditing of the Association's accounts.

## PART 8 – GRIEVANCE AND DISPUTES

### 57. Grievance and disputes procedures

- (1) This clause applies to disputes between –
  - (a) a member and another member; or
  - (b) a member and the Board.
- (2) Within 14 days after the dispute comes to the attention of the parties to the dispute, they must meet and discuss the matter in dispute, and, if possible, resolve the dispute.
- (3) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days after the meeting, hold another meeting in the presence of a mediator.
- (4) The mediator must be –
  - (a) a person chosen by agreement between the parties; or
  - (b) in the absence of agreement –
    - (i) for a dispute between a member and another member – a person appointed by the Board; or
    - (ii) for a dispute between a member and the Board – a person who is a mediator appointed or employed by the department administering the Act.
- (5) A member of the Association can be a mediator.
- (6) The mediator cannot be a party to the dispute.
- (7) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (8) The mediator, in conducting the mediation, must –
  - (a) give the parties to the mediation process every opportunity to be heard;
  - (b) allow due consideration by all parties of any written statement submitted by any party; and

- (c) ensure natural justice is accorded to the parties to the dispute throughout the mediation process.
- (9) The mediator must not determine the dispute. The cost of the mediation must be borne equally between the parties to the dispute.
- (10) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

## PART 9 – MISCELLANEOUS

### 58. Common seal

- (1) The common seal of the Association must not be used without the express authority of the Board and every use of that common seal must be recorded by the Secretary.
- (2) The affixing of the common seal of the Association must be witnessed by any 2 of the following:
  - (a) the Chairperson;
  - (b) the Secretary;
  - (c) the Treasurer.
- (3) The common seal of the Association must be kept in the custody of the Secretary or another person the Board from time to time decides.

### 59. Distribution of surplus assets on winding up

- (1) If on the winding up or dissolution of the Association, and after satisfaction of all its debts and liabilities, there remains any assets, the assets must not be distributed to the members or former members.
- (2) The surplus assets must be given or transferred to another organisation, association, authority or institution that –
  - (a) has similar objects or purposes;
  - (b) is not carried on for profit or gain to its individual members and whose rules prohibit the distribution of its income among its members;
  - (c) is eligible for tax deductibility of donations under Subdivision 30-B, section 30-100 of the Income Tax Assessment Act 1997

and is listed on the Register of Cultural Organisations maintained under that Act; and

- (d) is determined by resolution of the members.

## **60 Indemnity**

- (a) To the extent permitted by law, every member of the Board shall be indemnified out of the assets of the Association against all costs, losses and expenses which any member of the Board may incur or become liable to pay by any reason of any contract entered into or any act or thing done in their capacity as a Board member or by discharging such duties while acting in accordance with the instructions of the Board or the Association. This clause 60 (a) shall not apply if the liability results from or arises out of fraud by or wilful default of such Board member.
  - (b) No member of the Board shall be liable for the acts, receipts, deeds, neglects or defaults of any other member of the Board but only for the member's own acts, receipts, deeds, neglects or defaults alone`
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