

Constitution

Fashion Council WA Limited

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1 Key Organisational Information

1.1 Definitions and Interpretation

Schedule 1 applies and forms part of this Constitution to assist in its interpretation.

1.2 Name and nature of the Organisation

- (a) The name of the Organisation is as set out in Item 1 of Schedule 2.
- (b) The Organisation is a public company limited by guarantee under the Corporations Act.
- (c) Each Member undertakes to contribute an amount not exceeding the amount set out in Item 2 of Schedule 2 to the property of the Organisation if the Organisation is wound up:
 - (i) at a time when that person is a Member; or
 - (ii) within one (1) year of the time that person ceased to be a Member,for or towards:
 - (iii) payment of the debts and liabilities of the Organisation contracted before that person ceased to be a Member;
 - (iv) payment of the costs, charges and expenses of winding up the Organisation; and
 - (v) adjustment of the rights of the contributories among Members.

1.3 Interaction with Corporations Act and ACNC Act

- (a) The replaceable rules in the Corporations Act do not apply to the Organisation.
- (b) While the Organisation is a registered charity, the ACNC Act and the Corporations Act override any clause in this Constitution to the extent it is inconsistent with those Acts, to the extent those Acts apply to the Organisation in accordance with their provisions and this Constitution.
- (c) If the Organisation is not a registered charity under the ACNC Act (even if it remains a charity), the Corporations Act overrides any clause in this Constitution to the extent it is inconsistent with the Corporations Act.

1.4 Objects

- (a) The Organisation is established to be a charity whose objects are set out in Item 3(a) of Schedule 2.
- (b) The powers of the Organisation include those set out in Item 3(b) of Schedule 2.
- (c) The Organisation:
 - (i) will only apply the income and property of the Organisation in promoting the objects of the Organisation; and
 - (ii) must not transfer its assets and engagements to, or amalgamate with, any corporation, association or organisation which does not, to the same extent as this Constitution:
 - (A) restrict the application of its income and property and prohibit the making of payments and distributions to its members; and
 - (B) have charitable purpose objects similar to the objects of the Organisation in Article 1.4(a).

1.5 No distribution to Members

- (a) Subject to Article 1.5(b), the Organisation must not make any payment or distribution, or apply any part of the income or property of the Organisation, to any Member, including by way of dividend, surplus on winding up or otherwise.
- (b) Article 1.5(a) does not prevent the Organisation, with the approval of the Board and acting in good faith, paying:
 - (i) reasonable remuneration to a Member who is an employee or officer of the Organisation, subject to Article 5.9;
 - (ii) reasonable remuneration in consideration for services rendered or goods supplied by a Member to the Organisation in the ordinary course of business;
 - (iii) interest, at a reasonable rate based on commercial “arm’s length” terms, on money borrowed by the Organisation from a Member;
 - (iv) reasonable rent based on commercial “arm’s length” terms, for premises leased to the Organisation by a Member;
 - (v) out-of-pocket expenses properly and reasonably incurred by a Member at the request of the Organisation and for, or on behalf of, the Organisation;
 - (vi) without limiting paragraph (v) above, expenses properly and reasonably incurred by a Member in the capacity as a Director, in connection with the affairs of the Organisation; or
 - (vii) any other reasonable amount of similar character to those described in this Article 1.5(b).

2 Members

2.1 Classes of membership

The:

- (a) various Classes of Membership of the Organisation;
 - (b) restrictions (if any) in the number of Members or the number of Members within each Class;
 - (c) qualifications for admission to each Class; and
 - (d) rights attached to being a Member in each Class,
- are as prescribed in the By-laws from time to time.

2.2 Applications

- (a) Subject to Article 2.1 and the By-laws, a person may apply for Membership in the manner prescribed in this Article.
- (b) An applicant for Membership must:
 - (i) sign and deliver to the Organisation an application in the form prescribed in the By-laws including specification as to the Class of Membership being applied for; and
 - (ii) pay any Fees with respect to that application,as specified in the By-laws.
- (c) The Board, including on recommendation of management or a committee of the Board constituted with terms of reference including such purpose, may determine whether an applicant may become a Member.
- (d) The Board is not required to give any reason for the approval or rejection of any application to become a Member.

- (e) If an application to become a Member is accepted, the Organisation must:
 - (i) give written notice of Membership title acceptance to the applicant including details of the Class of Membership and the rights that are then attached to that Class;
 - (ii) request payment of any amount owing for any initial, subscription or other fees provided for in the By-laws incidental to such Membership; and
 - (iii) upon payment of such Fees, enter the applicant's name in the Register as a Member of the relevant Class.
- (f) If an application to become a Member is rejected, the Organisation must:
 - (i) give written notice of the rejection to the applicant; and
 - (ii) refund in full any Fees paid to the Organisation by the applicant when applying for Membership.

2.3 No transfers

Membership, and the rights of being a Member, are personal to the Member and are not transferable whether by operation of law or otherwise.

2.4 Ceasing to be a Member

- (a) A person will cease to be a Member if:
 - (i) that person resigns in accordance with Article 2.5;
 - (ii) that person is expelled under Article 2.6; or
 - (iii) a Cessation Event occurs in respect of that person.
- (b) The estate of a deceased Member is not released from any liability in respect of that person being a Member.

2.5 Resignation

- (a) A member may resign as a Member by giving the Organisation notice in writing.
- (b) Unless the notice provides otherwise, a resignation by a Member takes effect immediately on the giving of that notice to the Organisation.
- (c) A Member is not released from any accrued liability in respect of their Membership merely by giving notice of resignation.

2.6 Expulsion or suspension

- (a) Subject to this Article 2.6, the Board may resolve to:
 - (i) expel a Member; or
 - (ii) suspend a Member:
 - (A) for such period; and
 - (B) from enjoying such rights and privileges of Membership,as the Board may determine and give written notice of to the Member;
- (b) The Board may only act under Article 2.6(a) if:
 - (i) an Expulsion Event occurs in respect of the Member; and
 - (ii) other than in the case of non-payment by the Member of Fees or other moneys owing to the Organisation, the Organisation gives that Member at least ten (10) Business Days' notice in writing:
 - (A) stating the Expulsion Event and that the Member is liable to be expelled; and
 - (B) informing the Member of the Member's right under Article 2.6(c)(i).

- (c) Other than in the case of non-payment by the Member of Fees or other moneys owing to the Organisation, before passing any resolution under Article 2.6(a), the Board:
 - (i) must allow the Member to give to the Board, either orally or in writing, any explanation or defence of the Expulsion Event; and
 - (ii) may adopt other procedures to aid the resolution of complaints against the Member, including the appointment of complaints committees, conciliators and mediators if and as the Board may determine is appropriate in all the circumstances of the matter.
- (d) Where a resolution is passed under Article 2.6(a), the Organisation must give the Member, notice ("Discipline Notice") in writing of the expulsion or suspension, within ten (10) Business Days of the resolution.
- (e) Other than in the case of non-payment by the Member of Fees or other moneys owing to the Organisation, a member may, by notice in writing to the Organisation within ten (10) Business Days of issue of a Discipline Notice, request that a resolution to negate that expulsion (but not suspension) of that Member under Article 2.6(a) be moved at the next annual general meeting of the Organisation.
- (f) If a request under Article 2.6(e) is made, the Board must table at the annual general meeting of the Organisation an invitation for that meeting to move a resolution to overturn the decision of the Board to expel the Member concerned.
- (g) A Board resolution for expulsion under Article 2.6(a) is deemed to take effect:
 - (i) if the Member does not give a notice under Article 2.6(e), the date of that Board resolution;
 - (ii) if the Member gives notice under Article 2.6(e), as an immediate suspension of Membership and Member rights, and as an expulsion of Membership effective from the date of the next annual general meeting, unless the resolve of that annual general meeting is to overturn the resolution of the Board to expel the Member.
- (h) The Board may reinstate an expelled or suspended Member on any terms and at any time as the Board resolves, including as a pre-condition, a requirement that all amounts due but unpaid by the expelled or suspended Member are paid.

2.7 Variation of Classes and Class rights

Subject to the Corporations Act, this Constitution and the By-laws the Organisation may:

- (a) vary or cancel rights attached to being a Member of a Class; or
- (b) convert all Members from an existing Class to another Class.

3 Fees

3.1 Fees

- (a) The Organisation may require the payment of fees or levies by Members in the amounts and at the times as the By-laws prescribe.
- (b) The Organisation may make Fees payable for one or more Members, or Classes of Members, for different amounts and at different times.
- (c) The Organisation may, from time to time, give notice to Members or to any particular Member or Class of Members:
 - (i) revoking or postponing Fees;
 - (ii) extending the time for payment of Fees;
 - (iii) allowing for payment of Fees by instalments; or
 - (iv) stipulating the amount, the time, the method and the place of payment of Fees.

3.2 Interest

- (a) A Member must pay to the Organisation:
 - (i) interest at the rate Prescribed in the By-laws on any Fees which are not paid on, or before, the time appointed for payment, from the time appointed for payment to the time of the actual payment; and
 - (ii) expenses incurred by the Organisation because of the failure to pay, or late payment of, that amount.
- (b) The Organisation may waive payment of all or any part of an amount payable under Article 3.2(a).

4 Proceedings of Members

4.1 Who can call meetings of Members

- (a) The Board may call a meeting of Members at a time and place as the Board resolves in accordance with Part 2G.2 of the Corporations Act, notwithstanding the operation of Part 1.6 of the Corporations Act.
- (b) The Board must call and arrange to hold a general meeting on the request of Members made in accordance with Part 2G.2 of the Corporations Act, notwithstanding the operation of Part 1.6 of the Corporations Act.
- (c) The Members may call and arrange to hold a general meeting in accordance with Part 2G.2 of the Corporations Act, notwithstanding the operation of Part 1.6 of the Corporations Act.
- (d) Division 4 of Part 2G.2 of the Corporations Act also applies to the Organisation, notwithstanding the operation of Part 1.6 of the Corporations Act.

4.2 Annual General Meeting

- (a) The Organisation must hold an AGM at least once every calendar year.
- (b) The business of an AGM may include any of the following, even if not referred to in the notice of the meeting:
 - (i) the consideration of the annual financial report, the Directors' report and the auditor's report for the Organisation;
 - (ii) the appointment of the auditor of the Organisation and the auditor's remuneration; and
 - (iii) the election of Directors.

4.3 How to call meetings of Members

- (a) The Organisation must give not less than the Prescribed Notice of a meeting of Members.
- (b) Notice of a meeting of Members must be given to each Member, each Director, and any auditor of the Organisation and must be given in the manner prescribed in the By-laws.
- (c) Subject to Article 4.11(h), a notice of a meeting of Members must:
 - (i) set out the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (ii) state the general nature of the business of the meeting; and
 - (iii) set out or include any other information or documents specified by the Corporations Act (notwithstanding the operation of Part 1.6 of the Corporations Act).
- (d) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Members is not invalid merely because a person does not receive notice of the meeting or the Organisation accidentally does not give notice of the meeting to a person or there may be a non-material irregularity in the calling of the meeting or the notice of the meeting.

4.4 Right to attend, speak and vote at Member meetings

- (a) Each Member, the Directors, the Company Secretary and any auditor of the Organisation is entitled to attend and speak at any meeting of Members.
- (b) Subject to Article 4.8 and any limitation on the rights attaching to Membership of any Class of Members as specified in Schedule 4, certain Class of Members are entitled to vote at any meeting of Members.
- (c) Subject to Article 4.8, the Directors and Company Secretary are entitled to speak at any meeting of Members.
- (d) Subject to Article 4.8, the auditor of the Organisation (if any) is entitled to speak at any meeting of Members on any part of the business of the meeting that concerns the auditor in the capacity as auditor.

4.5 Meeting at more than one place

- (a) A meeting of Members may be held in two or more places linked together by any technology that:
 - (i) gives the Members as a whole in those places a reasonable opportunity to participate in proceedings;
 - (ii) enables the chair of the meeting to be aware of proceedings in each place; and
 - (iii) enables the Members in each place to vote on a show of hands and on a poll.
- (b) If a meeting of Members is held in two or more places under Article 4.5(a):
 - (i) a Member present at one of the places is taken to be present at the meeting; and
 - (ii) the chair of that meeting may determine at which place the meeting is taken to have been held.

4.6 Quorum

- (a) Subject to Article 4.6(e), a quorum for a meeting of Members or any Class of Members is that number of Members entitled to vote at that meeting as specified in Item 4 of Schedule 2.
- (b) In determining whether a quorum for a meeting of Members is present:
 - (i) where a person is present as a Member entitled to vote at the Meeting and as a proxy or attorney of another Member entitled to vote at the Meeting, that person is counted separately for each appointment provided that there is at least one other Member entitled to vote at the meeting present in person; and
 - (ii) where a person is present as a proxy or attorney for more than one Member each of whom is entitled to vote at the meeting, that person is counted separately for each appointment provided that there is at least one other Member entitled to vote at the meeting present in person.
- (c) A quorum for a meeting of Members must be present at the commencement of the meeting. If a quorum is present at the commencement of a meeting of Members, it is taken to be present throughout the meeting unless the chair of the meeting otherwise determines.
- (d) If a quorum is not present within thirty (30) minutes after the time appointed for a meeting of Members:
 - (i) if the meeting was called under Article 4.1(b) or Article 4.1(c), the meeting is dissolved; and
 - (ii) any other meeting is adjourned to the date, time and place as the Board may, by notice to the Members, appoint, or failing any appointment, to the same day in the next week at the same time and place as the meeting adjourned.
- (e) If a quorum is not present within thirty (30) minutes after the time appointed for an adjourned meeting of Members:

- (i) if there are not less than 50% of the number of Members present as required to constitute a quorum specified under Item 4 of Schedule 2, then they shall constitute a quorum; and
- (ii) otherwise, the meeting is dissolved.

4.7 Chair

- (a) The Chair must (if present within fifteen (15) minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Members.
- (b) If at a meeting of Members:
 - (i) there is no Chair;
 - (ii) the Chair is not present within fifteen (15) minutes after the time appointed for the holding of a meeting of Members; or
 - (iii) the Chair is present within that time but is not willing or able to chair all or part of that meeting,

the Board members present may, by majority vote, elect another Board member or another person present to chair all or part of the meeting of Members.

- (c) Subject to Article 4.7(a), if at a meeting of Members:
 - (i) a chair of that meeting has not been elected by the Board members under Article 4.7(b); or
 - (ii) the chair elected by the Board members is not willing or able to chair all or part of a meeting of Members,

the Members must elect another person, present and willing to act, to chair all or part of that meeting.

4.8 General conduct of meetings

- (a) Subject to the Corporations Act, the chair of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chair of a meeting of Members may delegate any power conferred by this Article to any person.
- (c) The powers conferred on the chair of a meeting of Members under this Article 4.8 do not limit the powers conferred by law.

4.9 Resolutions of Members

- (a) Subject to the Corporations Act, a resolution is passed if more votes are cast in favour of the resolution by Members entitled to vote on the resolution than are cast against the resolution.
- (b) Unless a poll is requested in accordance with Article 4.10, a resolution put to the vote at a meeting of Members is to be decided on a show of hands.
- (c) A declaration by the chair of a meeting of Members that a resolution has been passed on a show of hands, passed by a particular majority, or not passed, and an entry to that effect in the minutes of the meeting, is sufficient evidence of that fact, unless proved incorrect.

4.10 Polls

- (a) A poll may be demanded on any resolution at a meeting of Members except:
 - (i) the election of a chair of that meeting; or
 - (ii) the adjournment of that meeting.

- (b) A poll on a resolution at a meeting of Members may be demanded by:
 - (i) at least 3 Members present and entitled to vote on that resolution; or
 - (ii) the chair of that meeting.
- (c) A poll on a resolution at a meeting of Members may be demanded:
 - (i) before a vote on that resolution is taken; or
 - (ii) before, or immediately after, the result of the vote on that resolution on a show of hands is declared.
- (d) A demand for a poll may be withdrawn.
- (e) A poll demanded on a resolution at a meeting of Members must be taken in the manner and at the time and place the chair directs.
- (f) The result of a poll demanded and taken on a resolution of a meeting of Members is a resolution of that meeting.
- (g) A demand for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business pending the taking of the poll or the declaration of the result of the poll.

4.11 Adjourned, cancelled and postponed meetings

- (a) Subject to the Corporations Act, the chair of a meeting of Members:
 - (i) may; and
 - (ii) must, if the Members present with a majority of votes that may be cast at that meeting agree or direct the chair to do so, adjourn the meeting to any day, time and place.
- (b) No person other than the chair of a meeting of Members may adjourn that meeting.
- (c) Notice of an adjourned meeting of Members is only required if the period of adjournment exceeds the Prescribed Period.
- (d) Only business left unfinished is to be transacted at a meeting of Members resumed after an adjournment.
- (e) Subject to the Corporations Act and this Article 4.11, the Board may at any time postpone or cancel a meeting of Members by giving notice, not less than five (5) Business Days before the time at which the meeting was to be held, to each person to whom the notice of the meeting was required to be given.
- (f) A meeting of Members called under Article 4.1(b) must not be cancelled or postponed by the Board without the consent of the Members who requested the meeting.
- (g) A meeting of Members called under Article 4.1(c) must not be cancelled or postponed by the Board without the consent of the Members who called the meeting.
- (h) A notice adjourning or postponing a meeting of Members must set out the place, date and time for the revised meeting (and if the revised meeting is to be held in two or more places, the technology that will be used to facilitate this).

4.12 Number of votes

- (a) Subject to this Constitution and any rights or restrictions attached to a Class of Membership as prescribed in the By-laws, on a show of hands or on a poll at a meeting of Members, every Member present has one vote.

- (b) In the case of an equality of votes on a resolution at a meeting of Members, the chair of that meeting has a casting vote on that resolution both on a show of hands and on a poll, in addition to any vote the chair has in respect of that resolution.
- (c) A Member present at a meeting of Members is not entitled to vote on any resolution while that Member is the subject of suspension under this Constitution.
- (d) A Member present at a meeting of Members is not entitled to vote on a resolution at that meeting where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (e) The Organisation must disregard any vote on a resolution purported to be cast by a Member present at a meeting of Members where that person is not entitled to vote on that resolution including under Article 4.12(d) and by reason of any voting restriction applying to that Member's Class of Membership.
- (f) The authority of a proxy or attorney for a Member to speak or vote at a meeting of Members is suspended while the Member who appointed the proxy or attorney is present in person at that meeting.

4.13 Objections to qualification to vote

- (a) An objection to the qualification of any person to vote at a meeting of Members may only be made:
 - (i) before that meeting, to the Board; or
 - (ii) at that meeting (or any resumed meeting if that meeting is adjourned), to the chair of that meeting.
- (b) Any objection under Article 4.13(a) must be decided by the Board or the chair of the meeting of Members (as the case may be), whose decision, made in good faith, is final and conclusive.

4.14 Proxies and attorneys

- (a) A Member, who is entitled to attend and cast a vote at a meeting of Members, may vote on a show of hands and on a poll:
 - (i) in person;
 - (ii) by not more than one proxy; or
 - (iii) by not more than one attorney.
- (b) A proxy or attorney of a Member need not be a Member.
- (c) A Member may appoint a proxy or attorney for:
 - (i) all meetings of Members; or
 - (ii) any one or more specified meetings of Members.
- (d) An instrument appointing a proxy is valid if it is signed by the Member making the appointment and is in the Prescribed Form (or such other form reasonably approved of by the Board) and contains:
 - (i) the name and address of that Member;
 - (ii) the name of the Organisation;
 - (iii) the name of the proxy or the name of the office held by the proxy; and
 - (iv) the meeting(s) of Members at which the proxy may be used.
- (e) The chair of a meeting of Members may determine that an instrument appointing a proxy is valid even if it contains only some of the information specified in Article 4.14(d).

- (f) An instrument appointing an attorney must be substantially in a form as may be prescribed in the By-laws or such other form as the chair of the meeting of Members may accept, from time to time.
- (g) Subject to the Corporations Act, the decision of the chair of a meeting of Members as to the validity of an instrument appointing a proxy or attorney is final and conclusive.
- (h) Unless otherwise provided in the Corporations Act (notwithstanding the operation of Part 1.6 of the Corporations Act) or in the appointment, a proxy or attorney may:
 - (i) agree to a meeting of Members being called by shorter notice than is required by the Corporations Act or this Constitution;
 - (ii) agree to a resolution being either or both proposed and passed at a meeting of Members of which notice of less than the Prescribed Period is given;
 - (iii) speak on any resolution at a meeting of Members on which the proxy or attorney may vote;
 - (iv) vote at a meeting of Members (but only to the extent allowed by the appointment) on any resolution with respect to which the appointing Member may vote;
 - (v) demand or join in demanding a poll on any resolution at a meeting of Members on which the proxy or attorney may vote; and
 - (vi) attend and vote at any meeting of Members (at which the appointing Member may attend and vote) which is rescheduled or adjourned.
- (i) Unless otherwise provided in the Corporations Act (notwithstanding the operation of Part 1.6 of the Corporations Act) or in the appointment, a proxy or attorney may vote on:
 - (i) any amendment to a resolution on which the proxy or attorney may vote;
 - (ii) any motion not to put that resolution or any similar motion; and
 - (iii) any procedural motion relating to that resolution, including a motion to elect the chair of a meeting of Members, vacate the chair or adjourn that meeting,

to the extent to which the appointing Member would be entitled to vote, even if the appointment does or does not direct the proxy or attorney how to vote on that resolution.
- (j) A proxy cannot vote on a show of hands if it holds two or more appointments that specify different ways of voting or if it is also a member and holds one or more proxies which specify a different way of voting to the way the member intends to vote.
- (k) With a notice of meeting of Members the Organisation must send a form of proxy to Members in respect of that meeting of Members. The form of proxy is to be compliant with that prescribed in the By-laws and it must only provide for the Member:
 - (i) to appoint a proxy of the Member's choice, but may specify who is to be appointed as proxy if the Member does not choose; and
 - (ii) to vote for or against each resolution, and may also provide for the Member to abstain from voting on each resolution.
- (l) If the name of the proxy or the name of the office of the proxy in a proxy form of a Member is not filled in, the proxy of that Member is:
 - (i) the person specified by the Organisation in the form of proxy in the case the Member does not specify another person; or
 - (ii) if no person is so specified, the chair of the relevant meeting of Members.
- (m) A Member entitled to vote at a meeting of Members may specify the manner in which their proxy or attorney is to vote on a particular resolution at a meeting of Members but, unless specified, the proxy or attorney may vote as he or she thinks fit.
- (n) Subject to Article 4.14(j), a proxy:

- (i) does not need to vote, unless the proxy appointment specifies the way they must vote;
 - (ii) if the way they must vote is specified on the proxy form, must vote that way; and
 - (iii) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.
- (o) An appointment of proxy or attorney for a meeting of Members is effective only if the Organisation receives the appointment (and any authority under which the appointment was signed or a certified copy of the authority) not less than 48 hours before the time scheduled for commencement of that meeting (or any adjournment of that meeting).
- (p) Unless the Organisation has received notice in writing of the fact before the time scheduled for the commencement or resumption of a meeting of Members, a vote cast at that meeting by a person appointed by a Member as a proxy or attorney is, subject to this Constitution, valid even if, before the person votes, the appointment Member:
- (i) dies; or
 - (ii) is mentally incapacitated; or
 - (iii) revokes the appointment of that person; or
 - (iv) revokes the authority under which the person was appointed by a third party.
- (q) Nothing in this Article limits a Member who is a corporation from appointing a corporate representative in the terms of section 250D of the Corporations Act (notwithstanding the operation of Part 1.6 of the Corporations Act).

5 Directors

5.1 Number of Directors

- (a) The Organisation must have not less than and not more than the number of Directors specified in Item 6 of Schedule 2.
- (b) If the number of Directors is below the minimum fixed by this Constitution, the Board must not act except for appointing one or more additional Directors or to call, and arrange to hold, a meeting of Members for the purpose of electing a Director or Directors to ensure the Organisation has at least the minimum number of Directors required by this Article.
- (c) A Director must:
 - (i) be a Member with Voting Rights or a Representative of a Member with Voting Rights;
 - (ii) not be ineligible to be a director under the Corporations Act or ACNC Act.

5.2 Board Composition

- (a) The Board may comprise a combination of Member Elected Directors and Board Appointed Directors.
- (b) The Organisation must have not less than and not more than the number of Member Elected Directors as is specified in Items 6(c) and 6(d) of Schedule 2.
- (c) The Organisation may have up to that number of Board Appointed Directors as is specified in Item 6(e) of Schedule 2.

5.3 Appointment of Member Elected Directors by Members

- (a) Subject to 5.2(b) and 5.5(c), Member Elected Directors must be elected at general meetings of Members.
- (b) A Member entitled to Voting Rights may nominate a Member who is eligible under Article 5.1(c) to be a Member Elected Director.

- (c) The By-laws may prescribe the form and procedure to be followed with respect to the nomination of a Member Elected Director and the manner of presentment to the Members in general meeting of any such nomination for consideration by that meeting.
- (d) Subject to Article 5.5(c) a Member Elected Director will be appointed for a term commencing on the date of the general meeting at which they were elected and ending on the date determined in accordance with Article 5.5(a).

5.4 Appointment of Board Appointed Directors

- (a) Subject to Article 5.2(c), the Board of Directors may resolve to appoint one or more Board Appointed Directors from time to time.
- (b) A Board Appointed Director will be appointed for a term commencing on the date of appointment in accordance with this Article 5.4 and ending on the date determined in accordance with Article 5.5(b).
- (c) A Board Appointed Director appointed at a meeting of the Board will be taken to have been appointed on the date of that meeting or such other date as shall be the resolve of that meeting of the Board.

5.5 Retirement and re-election of Directors

- (a) Subject to this Article a Member Elected Director must retire at the third AGM after the date of their appointment by the Members.
- (b) Subject to this Article, a Board Appointed Director must retire at the next meeting of the Board following the third anniversary of their appointment by the Board.
- (c) Subject to this Article, if a Member Elected Director vacates or is removed from office for any reason, then the Board may resolve to appoint another person as a Member Elected Director in the place of that Member Elected Director who is no longer continuing in office PROVIDED THAT the term of that appointment will only be until the next AGM following the appointment, at which AGM the appointee must retire from office.
- (d) Subject to Article 5.6, a Director will be eligible for re-election at the expiration of their term of office.

5.6 Maximum term for a Director

- (a) Subject only to Articles 5.6(b) and 8.6, no Director (other than the General Manager, if a Director) may serve as a Director for a continuous period of more than the number of years specified in Item 7 of Schedule 2 PROVIDED THAT the Members in general meeting by special resolution and with the unanimous approval of all members of the Board, may, if the need or desire for the continuing services of the person specifically so warrants, authorise a member of the Board to remain for an additional twelve (12) month term to their scheduled retirement date.
- (b) In the case of a person appointed to fill a casual vacancy on the Board as a Member Elected Director under Article 5.5(c), the period between the appointment of that person as a Director and the next AGM following that appointment, will not be counted as a Term or part of a Term and will not be included in determining whether a Director has served as a Director for the purposes of Article 5.6(a) or, in the case of the Chair for the purposes of Article 8.6(c).
- (c) A person who served as a Director for a continuous period of the number of years specified in Item 7 or 8 of Schedule 2 and ceased acting as a Director in accordance with this Constitution may be subsequently elected or appointed as a Director in accordance with this Constitution not earlier than three (3) years following the date of conclusion of his or her last term as a Director.

5.7 Vacation of office of Director

- (a) A Director may resign from office by giving the Organisation notice in writing.

- (b) Subject to the Corporations Act (notwithstanding the operation of Part 1.6 of the Corporations Act) and this Article 5.7, the Members in general meeting, by ordinary resolution, may remove any Director from office.
- (c) A Director automatically ceases to be a Director if the Corporations Act so provides (notwithstanding the operation of Part 1.6 of the Corporations Act) or if that Director:
 - (i) dies;
 - (ii) becomes of unsound mind or a person whose property is liable to be dealt with under a law relating to mental health;
 - (iii) is absent without the consent of the Board from all meetings of the Board held during a period of four (4) months and the other Directors resolve that his or her office be vacated;
 - (iv) resigns or is removed from office under this Constitution;
 - (v) becomes bankrupt;
 - (vi) ceases to be a Member with Voting Rights;
 - (vii) is a Representative of a Member with Voting Rights, and that Member stops being a Member with Voting Rights;
 - (viii) is a Representative of a Member with Voting Rights, and the Member notifies the Organisation that the Representative is no longer a Representative;
 - (ix) becomes ineligible to be a Director under the Corporations Act or the ACNC Act.

5.8 No Alternate Directors

A Director may not appoint a person as his or her alternate Director.

5.9 Payment to Directors prohibited

- (a) Subject to this Article 5.9 the Organisation must not pay any remuneration or fees to a Director (other than in the case of an Executive Director in the terms of the Executive Director's employment arrangements) for performing his or her duties and responsibilities as a Director unless the Members in general meeting have approved the payment of remuneration or fees by and at the discretion of the Board within an aggregate maximum annual amount (or pool or cap) approved of by resolution of the Members in general meeting.
- (b) A payment of the kind referred to in Article 1.5(b) may be made to a Director if that payment has been approved by the Board.
- (c) The Organisation may pay premiums for insurance indemnifying Directors, to the extent permitted by law (including the Corporations Act) and this Constitution in accordance with Article 6.4.

6 Officers and Officeholders

6.1 General Manager

- (a) The Board may appoint a person as the General Manager (**GM**), for any period and on any terms (including as to remuneration) as the Board resolve.
- (b) Subject to any agreement between the Organisation and the GM, the Board may remove or dismiss or suspend the GM at any time, with or without cause.
- (c) The Directors may delegate such of their powers (including the power to delegate) to the GM as provided in Article 7.3.
- (d) Subject to any agreement between the Organisation and the GM the Board may:
 - (i) revoke or vary the appointment of the GM;
 - (ii) revoke or vary any power delegated to the GM; and/or

- (iii) suspend the appointment of the GM or suspend the delegation of powers to the GM for such period and on such terms as the Board may bona fide determine.
- (e) The GM must exercise the powers delegated to him or her in accordance with any lawful directions of the Board.
- (f) The exercise of a delegated power by the GM is as effective as if the Board exercised the power.
- (g) Subject to Article 6.1(h), the GM is not a Director and has no inherent power or right to attend, speak or vote at meetings of the Board.
- (h) The Board may appoint the GM as a Board Appointed Director and if it does the following shall apply:
 - (i) the GM will cease to be a Director if the GM is removed, dismissed for any reason, or otherwise resigns as GM;
 - (ii) the GM is not entitled to attend, speak or vote as a Director at any meeting of the Board if the GM is under suspension from office.

6.2 Secretary

- (a) The Organisation must have at least one Secretary, if required by the Corporations Act.
- (b) A Secretary or Secretaries for the Organisation may be appointed by the Board for any period and on any terms (including as to remuneration) as the Board resolves.
- (c) Subject to any agreement between the Organisation and the Secretary, the Board may remove or dismiss a Secretary at any time, with or without cause, and may revoke or vary the appointment of a Secretary.
- (d) In addition to any duties and responsibilities of the Secretary under the Corporations Act or ACNC Act, the Board may prescribe the responsibilities of the Secretary in the By-laws.

6.3 Auditor

- (a) If required by the Corporations Act or ACNC Act, the Board must appoint an Auditor whose appointment must be approved or ratified at each annual general meeting. If an annual general meeting does not approve or ratify the Auditor appointed by the Board, a special general meeting must be convened promptly to resolve to appoint an Auditor acceptable to that special general meeting in substitution for the Auditor appointed by the Board.
- (b) All accounts, books and records of the Organisation will be open to inspection and examination by the Auditor at all reasonable times.

6.4 Indemnity and insurance

- (a) To the extent permitted by law, the Organisation must indemnify each Relevant Officer against:
 - (i) a Liability of that person; and
 - (ii) Legal Costs of that person.
- (b) To the extent permitted by law, the Organisation may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- (c) To the extent permitted by law, the Organisation may pay, or agree to pay, a premium for a contract insuring a Relevant Officer against:
 - (i) a Liability of that person; and
 - (ii) Legal Costs of that person.
- (d) To the extent permitted by law, the Organisation may enter into an agreement or deed with:
 - (i) a Relevant Officer; or

- (ii) a person who is, or has been, an officer of the Organisation or a related body corporate of the Organisation,

under which the Organisation must do all or any of the following:

- (i) keep books of the Organisation and allow that officer, and his or her advisers, access to those books on the terms agreed;
- (ii) indemnify that officer against any Liability of that officer;
- (iii) make a payment (whether by way of advance, loan or otherwise) to that officer in respect of Legal Costs of that officer; and
- (iv) keep that officer insured in respect of any act or omission by that officer, while a Relevant Officer or an officer of the Organisation or a related body corporate of the Organisation, on the terms agreed (including as to payment of all or part of the premium for a contract of insurance).

7 Powers and duties of the Organisation and Board

7.1 General powers

- (a) Subject to this Constitution, the Organisation may exercise, in any manner permitted by the Corporations Act, any power which a public company limited by guarantee may exercise under the Corporations Act to achieve the objects of the Organisation set out in this Constitution.
- (b) The business of the Organisation is to be managed by, or under the direction of, the Board.
- (c) The Board may exercise all the powers of the Organisation except any powers that the Corporations Act or this Constitution requires the Organisation to exercise in general meeting.
- (d) The Board must decide on the responsible financial management of the Organisation including:
 - (i) any suitable written delegations of power, and
 - (ii) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- (e) The Board is responsible for the sound governance of the Organisation.

7.2 Execution of documents

- (a) If the Organisation has a common seal, the Organisation may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by:
 - (i) two (2) Directors; or
 - (ii) a Director and a Secretary; or
 - (iii) a Director and another person appointed by the Board for that purpose.
- (b) The Organisation may execute a document without a common seal if the document is signed by:
 - (i) two (2) Directors; or
 - (ii) a Director and a Secretary; or
 - (iii) a Director and another person appointed by the Board for that purpose.
- (c) The Board may resolve, generally or other common use documents specified by the Board, may be affixed by mechanical or other means.
- (d) Negotiable instruments may be signed, drawn, accepted, endorsed or otherwise executed by or on behalf of the Organisation in the manner, and by the persons, as the Board resolves.

7.3 Committees and delegates

- (a) The Board may delegate any of their powers (including this power to delegate) to a committee of the Board, the GM, an employee of the Organisation or a Member.
- (b) The Board may revoke or vary any power delegated under Article 7.3(a).
- (c) A committee or delegate must exercise the powers delegated in accordance with any directions of the Board.
- (d) The exercise of a delegated power by the committee or delegate is as effective as if the Board exercised the power.
- (e) Any delegation of the Board's powers and functions must be recorded in the Organisation's minute book.

7.4 Attorney or agent

- (a) The Board may appoint any person to be attorney or agent of the Organisation for any purpose, for any period and on any terms (including as to remuneration) as the Board resolves.
- (b) The Board may delegate any of their powers (including the power to delegate) to an attorney or agent.
- (c) The Board may revoke or vary:
 - (i) an appointment under Article 7.4(a); or
 - (ii) any power delegated to an attorney or agent.

7.5 Duties of Directors

The Directors must comply with their duties as directors under the law, including the duties imposed on directors and officers under the Corporations Act and ACNC Act (to the extent those Acts are applicable).

7.6 Conflicts of interest

- (a) A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of the Board (or that is proposed in a circular resolution):
 - (i) to the other Directors, or
 - (ii) if all of the Directors have the same conflict of interest, to the Members at the next meeting of Members, or at an earlier time if reasonable to do so.
- (b) The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- (c) Each Director who has a material personal interest in a matter that is being considered at a meeting of the Board (or that is proposed in a circular resolution) must not, except as provided under Article 7.6(d):
 - (i) be present at the meeting while the matter is being discussed, or
 - (ii) vote on the matter.
- (d) A Director may still be present and vote if:
 - (i) their interest arises because they are a Member of the Organisation, and the other Members have the same interest;
 - (ii) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Organisation;
 - (iii) their interest relates to a payment by the Organisation under an indemnity provided in accordance with Article 6.4, or any contract relating to an indemnity that is allowed under the Corporations Act;

- (iv) the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter; or
- (v) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (A) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Organisation; and
 - (B) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

8 Proceedings of Board

8.1 Written resolutions of the Directors

- (a) The Directors may pass a resolution, without a meeting of the Board being held, if not less than 75% of all the Directors, entitled to vote on the resolution, assent to a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of documents referred to in Article 8.1(a) may be used for assenting to by Directors if the wording of the resolution and the statement is the same in each copy.
- (c) A Director may signify assent to a document under this Article 8.1(a) by signing the document or by notifying the Organisation of that assent in a manner permitted by Article 13.3.
- (d) Where a Director signifies assent to a document under Article 8.1(c) other than by signing the document, the Director must, by way of confirmation, sign the document before, or at, the next Board meeting attended by that Director.

8.2 Meetings of the Board

- (a) The Directors may meet, adjourn and otherwise regulate their Board meetings as they think fit.
- (b) A meeting of the Board may be held using any technology consented to by all Directors.
- (c) The consent of the Directors under Article 8.2(b) may be for all meetings of the Board or for any one or more specified meetings.
- (d) A Director may withdraw his or her consent under Article 8.2(b) within a reasonable period before the meeting.
- (e) If a meeting of the Directors is held in two or more places linked together by any technology:
 - (i) a Director present at one of the places is taken to be present at the meeting unless and until that Director states to the chair of the meeting that he or she is discontinuing participation in the meeting; and
 - (ii) the chair of that meeting may determine at which place the meeting will be taken to have been held.

8.3 Who can call meetings of the Board

- (a) The Chair may call a meeting of the Board at any time.
- (b) On request of the Chair or any two (2) Directors, the Secretary must call a meeting of the Board.

8.4 How to call meetings of the Board

- (a) Subject to Article 8.4(e), notice of a meeting of the Board must be given to each Director.
- (b) A notice of meeting of the Board must:

- (i) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
 - (ii) state the general nature of the business of the meeting.
- (c) Subject to Article 8.4(e), not less than 24 hours' notice of a meeting of the Board should be given, unless all Directors agree otherwise.
- (d) A Director may waive notice of a meeting of the Board by notice in writing to the Organisation to that effect.
- (e) In the case of an emergency or other corporate urgency, a meeting may be called on short notice, without formal notice of meeting at the behest of the Chair and Deputy Chair, or the Chair and the GM.

8.5 Quorum

- (a) Subject to the Corporations Act, a quorum for a meeting of the Board is the greater of three (3) Directors and not less than 50% of the total number of Directors.
- (b) A quorum for a meeting of the Board must be present at all times during the meeting provided that a person who has declared a conflict of interest and has absented themselves (or abstained from deliberating and/or voting) on a matter before the meeting will still be counted as being present for the purposes of a quorum.

8.6 Chair

- (a) Subject to this Article 8.6, the Board may:
- (i) elect a Director as chair of the Board for a term of the lesser of three (3) years (or such shorter period determined by the Board), or until the relevant person ceases to be a Director; and
 - (ii) elect a Director as deputy chair, for a term of the lesser of three (3) years (or such shorter period determined by the Board) or until the relevant person ceases to be Director.
- (b) The Board may remove:
- (i) the Chair as chair of the Board, and/or
 - (ii) the deputy chair as deputy chair of the Board,
- by Board resolution at any time.
- (c) A Director must not be elected as the Chair for more than two (2) Terms and must not be elected as the Chair if the term of appointment as Chair would result in the Director serving on the Board for a continuous period of more than the number of years specified in Item 8 of Schedule 2 (or such longer period where Article 5.6(b) applies).
- (d) The Chair must (if present within fifteen (15) minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of the Board.
- (e) If:
- (i) there is no elected Chair; or
 - (ii) the Chair is not present within fifteen (15) minutes after the time appointed for the holding of a meeting of the Board; or
 - (iii) the Chair is present within that time but is not willing or able to chair all or part of that meeting,
- the Directors present must elect one of themselves to chair all or part of the meeting.

8.7 Resolutions of the Board

- (a) A resolution of the Board is passed if more votes are cast in favour of the resolution by Directors entitled to vote on the resolution than votes cast against the resolution.

- (b) Subject to the Corporations Act and this Article 8.7, each Director has one vote on a matter arising at a meeting of the Board.
- (c) Subject to the Corporations Act, in case of an equality of votes on a resolution at a meeting of the Board, the chair of that meeting has a casting vote on that resolution in addition to any vote the chair of the meeting has in his or her capacity as a Director, except where there are only two (2) Directors entitled to vote on the resolution.

9 Board Committees

9.1 Board may establish Committees

The Board may on its own resolution constitute committees of the Board to assist it in the performance of its responsibilities.

9.2 Terms of Reference and Governance

The terms of reference, governance arrangements, and meeting processes and accountability requirements of Board committees will be set out in the By-laws or determined by the Board at the time of establishment of the relevant committee.

9.3 Review

The Board may from time to time:

- (a) review and vary the matters referred to in Article 9.2; and
- (b) resolve to terminate the ongoing constitution of a Board committee.

10 Records

10.1 Financial Year

The financial year of the Organisation ends on 31 December in each year.

10.2 Accounts

The Board, through the Secretary and the GM, shall cause proper accounts, books and records to be kept, in accordance with accepted Australian accounting standards consistently applied for like bodies corporate to the Organisation and otherwise as may be required under the Corporations Act or ACNC Act, with respect to:

- (a) all sums of money received and expended by the Organisation and the matter in respect of which the receipt and expenditure takes place;
- (b) all financial transactions of the Organisation;
- (c) the assets and liabilities of the Organisation; and
- (d) the Organisation's operations.

10.3 Books, accounts and records

The accounts, books and records shall be kept at the office of the Organisation or such other place from time to time determined by the Board and are open to inspection by members of the Board, and must be retained in accordance with the Corporations Act and/or ACNC Act (as applicable).

10.4 Audit

The Board shall cause the accounts to be audited annually by the Auditor, if required by the Corporations Act or ACNC Act.

10.5 Minutes

- (a) The Organisation must, within one (1) month, make and keep the following records:
 - (i) minutes of proceedings and resolutions of meetings of Members or Directors' meetings (including meetings of any committees);

- (ii) minutes of circular resolutions of Directors;
 - (iii) a copy of a notice of each meeting of Members or Directors' meetings; and
 - (iv) a copy of any members' statement distributed to members in accordance with Article 4.1(d).
- (b) The Directors must ensure that minutes of a meeting of Members or a Directors' meeting are signed within a reasonable time after the meeting by:
- (i) the chair of the meeting, or
 - (ii) the chair of the next meeting.

11 Alterations to Constitution

No new Article or provision shall be added to this Constitution nor shall any of the Articles or provisions contained herein be amended, altered or rescinded unless:

- (a) a special resolution of Members in general meeting so to do is passed; and
- (b) the provisions of the Corporations Act are complied with; and
- (c) the effect of the addition, amendment, alteration or rescission does not cause the Organisation to no longer be a charity.

12 By-laws

12.1 By-laws

In addition to the provisions of this Constitution including Article 12.6 and Schedule 4, and subject to Article 12.3, By-laws may from time to time be prescribed to govern and/or regulate By-law Matters.

12.2 By-law Matters

By-law matters include:

- (a) any matter of a nature authorised by this Constitution to be capable of being the subject of a By-law;
- (b) any matter pertinent to:
 - (i) Membership;
 - (ii) meetings of Members;
 - (iii) rights, responsibilities and conduct of Members;
 - (iv) governance and management of the Organisation;
 - (v) policies, procedures, protocols and practices of the Organisation.

12.3 No conflict with Constitution

No By-law may conflict with a provision of this Constitution and if it does:

- (a) the By-law is void to the extent of such conflict; and
- (b) the provisions of this Constitution will prevail.

12.4 Making of By-laws

- (a) By-laws may be made, varied or revoked by resolution of the Board passed by not less than a 75% absolute majority of all Board members entitled to vote voting in favour of the relevant By-law.
- (b) By-Laws, and any variation to or revocation of them, will become effective on the date so determined by the Board at the time of their making or in the absence of such a determination, thirty (30) days after the Board resolution making, varying or revoking them.

- (c) Within seven (7) days of the Board making, varying or revoking a By-Law, a copy of the By-Law (or its variation or revocation, as applicable) is to be published on the Organisation's website in a reasonably prominent location to inform Members thereof.

12.5 Force and Effect of By-Laws

By-Laws will have contractual force and effect between Members, and between the Organisation and the Members, between the Organisation and its officers, and between the Organisation's officers, in the same manner as if the By-laws had constitutional force and effect in their own right.

12.6 By-laws to apply at time of adoption of this Constitution

The By-laws to apply from the effective date of adoption of this Constitution are set out in Schedule 4.

13 Notices

13.1 Notice to Members

- (a) Subject to Article 13.1(b), the Organisation may give notice to a Member:
 - (i) by hand delivery;
 - (ii) by sending it by prepaid post to the address of the Member in the Register or the alternative address (if any) nominated by that Member;
 - (iii) by sending it to the fax number or electronic address (if any) nominated by that Member; or
 - (iv) with the approval, given by special resolution, of the Directors, by advertisement in accordance with Article 13.1(c).
- (b) If the address of any Member in the Register is not within Australia and that Member does not nominate an alternative address within Australia, unless otherwise specified by the Corporations Act, the Organisation may (in addition to any method of service specified in Article 13.1(a)) give a notice to that Member by:
 - (i) posting it on the Organisation's internet website (if any); or
 - (ii) advertisement in accordance with Article 13.1(c).
- (c) Any notice allowed to be given by the Organisation to Members by advertisement is sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.
- (d) A notice sent by prepaid post may be included:
 - (i) separately with; or
 - (ii) as part of the text of,

any other article, sent by prepaid post, including any publication sent by the Organisation to Members.

13.2 Notice to Directors

The Organisation may give notice to a Director:

- (a) by hand delivery;
- (b) by sending it by prepaid post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- (c) by sending it to the fax number or electronic address (if any) nominated by that person; or
- (d) by any other means agreed between the Organisation and that person.

13.3 Notice to the Organisation

A person may give notice to the Organisation:

- (a) by leaving it at the registered office of the Organisation;
- (b) by sending it by prepaid post to the registered office of the Organisation;
- (c) by sending it to the fax number at the registered office of the Organisation;
- (d) by sending it to the electronic address (if any) nominated by the Organisation for that purpose; or
- (e) by any other means permitted by the Corporations Act.

13.4 Time of service

- (a) A notice sent by prepaid post to an address within Australia is taken to be given:
 - (i) in the case of a notice of meeting, one (1) Business Day after it is posted; or
 - (ii) in any other case, at the time at which the notice would be delivered in the ordinary course of post.
- (b) A notice sent by prepaid post to an address outside Australia is taken to be given:
 - (i) in the case of a notice of meeting, three (3) Business Days after it is posted; or
 - (ii) in any other case, at the time at which the notice would be delivered in the ordinary course of post.
- (c) A notice sent by fax or electronic means is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole notice was sent to the correct fax number or electronic address.
- (d) The giving of a notice by prepaid post is sufficiently proved by evidence that the postage was paid and the notice:
 - (i) was addressed to the correct address of the recipient; and
 - (ii) was placed in the post.

13.5 Signatures

The Board may decide, generally or in a particular case, that a notice given by the Organisation be signed by mechanical or other means.

14 Winding up

14.1 Transfer of surplus

If upon the winding-up or dissolution 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 or funds shall not be paid to or distributed among its members, but shall be given or transferred to some other fund, authority or institution having objects similar to the objects of this 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 1997* and listed on the Register of Cultural Organisations maintained under the Act.

14.2 Application to Supreme Court

If the Members fail to make the requisite determinations under Article 14.1 within twenty (20) Business Days of the winding up of the Organisation, the liquidator must make an application to the Supreme Court of Western Australia to make that determination.

14.3 Revocation of deductible gift recipient endorsement

If the Organisation's deductible gift recipient endorsement is revoked (whether or not the Organisation is to be wound up), any surplus gift funds must be transferred to one or more charities that meet all of the requirements of 14.1(a) – 14.1(c) (inclusive), as decided by the Directors.

14.4 Definitions

For the purpose of this Article 14:

- (a) 'gift funds' means:
 - (i) gifts of money or property for the principal purpose of the Organisation;
 - (ii) contributions made in relation to a fund-raising event held for the principal purpose of the Organisation; and
 - (iii) money received by the Organisation because of such gifts and contributions; and
- (b) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the Income Tax Assessment Act 1997 (Cth).

15 Transitional Provisions

15.1 Transitional Arrangements

The Transitional Provisions shall apply in accordance with their terms as if set out in this Constitution in full.

15.2 Transitional Provisions Paramount

In the case of any inconsistency between the Transitional Provisions and any other provision of this Constitution or the By-laws, the Transitional Provisions will prevail.

15.3 Termination of Transitional Provisions

The Transitional Provisions shall have continuing force or effect in accordance with their terms.

Schedule 1

Definitions and interpretation

1. Definitions

In this Constitution:

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

“**AGM**” means the Annual General Meeting of Members.

“**Auditor**” means the person(s) appointed as auditor or the Organisation under Article 6.4.

“**Board**” means the Directors acting from time to time as a board of directors of the Organisation.

“**Board Appointed Director**” means a Director appointed under Article 5.4.

“**Business Day**” means a day except a Saturday, Sunday or public holiday in Western Australia.

“**By-laws**” means by-laws of the Organisation in the terms of Article 12.

“**By-law Matters**” means matters of the nature mentioned in Article 12.2 which may be the subject of a By-law.

“**Cessation Event**” means, in respect of a Member:

- (a) the death or bankruptcy of that Member;
- (b) the Member is wound up or otherwise dissolved or deregistered (in the case of and incorporated Member); or
- (c) that Member becoming of unsound mind or a person whose property is liable to be dealt with under a law relating to mental health.

“**Chair**” means a person elected as chair of the Board under Article 8.6.

“**Class**” means a class of Membership as prescribed in the By-Laws.

“**Corporations Act**” means the Corporations Act 2001 (Commonwealth).

“**Director**” means a director of the Organisation for the time being.

“**Expulsion Event**” means, in respect of a Member:

- (a) that Member has been convicted within the preceding five (5) years in criminal proceedings brought in connection with a contravention of the law where the penalty for the offence may be incarceration for a period in excess of twelve (12) months;
- (b) that Member has failed to pay any Fees or other money owing to the Organisation and those Fees or other moneys remain outstanding for at least forty (40) Business Days after written notice of demand for payment has been issued to the Member; or
- (c) the Board determines that in its opinion the conduct of that Member is unbecoming of a Member or that the continued Membership of the Member may be prejudicial to the objects, interests or reputation of the Organisation.

“**Fee**” means a fee or levy payable by Members under Article 3.1.

“**Financial Year**” means 1 January to 31 December (inclusive) in the same year, or such other period as may be prescribed in the By-Laws.

“**GM**” means the person appointed as General Manager for the time being under Article 6.1

“**General Membership Rights**” are those rights of Members set out in Item 1(c) of Schedule 4.

“**Legal Costs**” or a person, means legal costs incurred by that person in defending an action for a Liability of that person.

“**Liability**” of a person, means a liability incurred by that person as an officer of the Organisation or a related body corporate of the Organisation.

“Member” means a person whose name is entered in the Register as a member of the Organisation and **“Membership”** has a corresponding meaning.

“Member Elected Director” means a Director appointed under Article 5.3 or Article 5.5(c).

“Policy” and **“Policies”** means policies and procedures (including any Board or corporate governance charter) Prescribed from time to time by the Board;

“Prescribe” means for the Board to prescribe in the By-laws or otherwise to so resolve as a Policy;

“Prescribed Form” means an instrument in all material respects in such form Prescribed in the By-laws or otherwise as may be acceptable to the Board in its discretion.

“Prescribed Notice” means the Prescribed Period of notice or any shorter period of notice for a meeting allowed under the Corporations Act.

“Prescribed Period” means twenty-one (21) days.

“Register” means the register of Members kept under the Corporations Act.

“Relation” in relation to a General Member or prospective General Member means a person who is such person’s, spouse, parent, child, sibling, grandparent, grandchild or other relationship (blood or otherwise) Prescribed or otherwise approved of by the Board.

“Relevant Officer” means a person who is, or has been, a Secretary, a General Manager, a Director or another person who has held office in the Organisation and would be defined as an “officer” in the terms of the Corporations Act.

“Representative” means a nominated representative of a Member of the class “Corporate Member” as Prescribed in the By-laws.

“Secretary” means a company secretary of the Organisation for the time being.

“Term” means the term of office of each Director in accordance with this Constitution and the passing of three (3) AGMs.

“Transitional Provisions” means those provisions of this Constitution appearing in Schedule 3.

“Voting Rights” means the right at general meetings of Members of the Organisation to vote on resolutions or propose or second resolutions.

2. Interpretation

- (a) In this Constitution:
- (i) a reference to a meeting of Members includes a meeting of any class of Members;
 - (ii) a Member is taken to be present at a meeting of Members if the Member is present in person or by proxy or attorney or Representative; and
 - (iii) a reference to a notice or document in writing includes a notice or document given by fax, electronic means or other form of written communication.
- (b) In this Constitution, headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:
- (i) words importing the singular include the plural (and vice versa);
 - (ii) words indicating a gender include every other gender;
 - (iii) the word “person” includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (iv) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
 - (v) the word **“includes”** in any form is not a word of limitation.

- (c) Unless the context indicates a contrary intention, in this Constitution:
 - (i) a reference to an Article or a Schedule, is to an article or a schedule of this Constitution;
 - (ii) a reference in a Schedule to a paragraph is to a paragraph of that Schedule;
 - (iii) a Schedule is part of this Constitution; and
 - (iv) a reference to this Constitution, is to this Constitution (and where applicable any of its provisions) as modified or repealed from time to time.
- (d) Unless the context indicates a contrary intention, in this Constitution, a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.
- (e) Unless the context indicates a contrary intention, in this Constitution:
 - (i) an expression that deals with a matter dealt with by a provision of the Corporations Act has the same meaning as in that provision; and
 - (ii) an expression that is defined in section 9 of the Corporations Act has the same meaning as in that section.

3. Exercise of powers

Where this Constitution confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty must be performed, from time to time, as the occasion requires.

4. Severing invalid provisions

If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that does not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Constitution.

Schedule 2

Key Information

1. Name of Organisation

Fashion Council WA Limited

2. Amount of Member's guaranteed contribution

AUD\$1.00

3. Objects and Powers of Organisation

- (a) The cultural, educational and charitable objects for which FCWA is established are to represent, promote and champion the design industry in Western Australia through recognition as the peak industry body with a priority focus on growing awareness of brand Western Australia globally, and:
- (i) To be a leading national organisation in the presentation and promotion of fashion design;
 - (ii) To promote, improve, publicise, preserve and encourage Australian fashion design throughout the world;
 - (iii) To advocate and encourage opportunities for Australian fashion designers to meet on local and national level with each other and with international designers;
 - (iv) To promote and encourage co-operation between local fashion designers and national and international fashion designers in the industry;
 - (v) To establish, promote and run forums and conferences for the dissemination of fashion design discussions and philosophies;
 - (vi) To assist local fashion design students to make first contact with international fashion designers and international design ideas;
 - (vii) To promote research into fashion design and fashion design education;
 - (viii) To promote the development of fashion design education and training;
 - (ix) To establish national policies, priorities and standards for fashion design education and training;
 - (x) To assist in dissemination of fashion ideas and teaching methods of other countries and expose Australian design students and lecturers to those ideas and methods;
 - (xi) To carry out programmes, organise and promote conferences and meetings, and to work co-operatively with universities, colleges, industries and other centres for learning for education in all matters relating to the professional development of design students, fostering innovative and effective techniques as FCWA shall deem appropriate in order that they can discharge their obligation pursuant to the forgoing purposes.
 - (xii) To promote and encourage participation from and integration with stakeholders and community bodies to further the awareness of fashion and creative sectors, and to use fashion as a vehicle to unite and support communities.
 - (xiii) To carry out initiatives and provide services that promote, support and develop the sector for the greater good of the community, including providing opportunities for the community and associated bodies to engage with the organization and its platforms at no or minimal cost.

- (b) The powers of the Organisation include the following:
- (i) to collect funds and accept subscriptions and donations or real and personal property and gifts by will or otherwise for all or any of the purposes of the Organisation;
 - (ii) to purchase or otherwise acquire land or other property or any legal or equitable interest in land or other property and to improve, manage, sell, lease, mortgage, or otherwise deal with all or any land or other property of the Organisation.
 - (iii) to erect buildings and other structures and improvements for the purpose of the Organisation and to alter, repair, rebuild and maintain any such structures or improvements for the time being belonging to, used by or leased by the Organisation and to provide any such building structures or improvements with all suitable equipment and facilities.
 - (iv) to borrow or raise money for or in connection with the objects of the Organisation in any manner whatsoever including by mortgaging, charging or servicing the property of the Organisation or any part thereof.
 - (v) to invest any moneys of the Organisation not immediately required in any security authorised by the law of Western Australia for the investment of trust moneys or in such other forms or form of investment as may be determined by the Board.
 - (vi) to generally manage, invest and expend moneys belonging to the Organisation.
 - (vii) to undertake and execute any trusts which may be deemed desirable or conducive to the objects of the Organisation.
 - (viii) to enter into contracts, arrangements and agreements with any corporation or government, municipal, local or other authority or any person that may be conducive to the objects of the Organisation of them and without limiting this sub-clause to obtain from any such corporation, government, authority, or person any rights, privileges or concessions and to carry out, exercise and comply with those rights, privileges or concessions.
 - (ix) to do all such things as are conducive to or incidental to the attainment of any of the objects of the Organisation.
 - (x) to make payment in good faith of the remuneration of any officer, employee, consultant or agent of the Organisation or any other person in return for services rendered or to be rendered to the Organisation.
 - (xi) to make payment or reimbursement of out of pocket expenses properly and reasonably incurred by a person on behalf of the Organisation and with the authority of the Organisation.
 - (xii) to undertake all and any powers of a company under the Corporations Act.
- (c) None of the general or other descriptions under (a) and (b) above shall be limited or restrained by reference to any other provision of those paragraphs.

4. Public Fund Clause

FCWA will establish and maintain a public fund.

Donations will be deposited into the public fund listed on the Register of Cultural Organisations. These monies will be kept separate from other funds of FCWA and will only be used to further the principal purpose of the FCWA. Investment of monies in this fund will be made in accordance with guidelines for public funds as specified by the Australian Taxation Office.

The fund will be administered by a management committee or a subcommittee of the management committee, the majority of whom, because of their tenure of some public office or their professional standing, have an underlying community responsibility, as distinct from obligations solely in regard to the cultural objectives of FCWA.

No monies or assets in this fund will be distributed to members or office bearers of the FCWA, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.

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.

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 company;
- (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 1997.

The company must comply with any rules that the Treasurer or the Minister for the Arts make to ensure that gifts made to the public fund will only be used for the company's principal purpose. The company must provide to the Department statistical information on the gifts made to the public fund every six (6) months.

5. Quorum of Members for Meetings

The lesser of four (4) Members with unrestricted Voting Rights and 5% of the total number of Members with unrestricted Voting Rights.

6. Number of Directors

- (a) Maximum number of Directors
9
- (b) Minimum number of Directors
6
- (c) Minimum number of Member Elected Directors
4
- (d) Maximum number of Member Elected Directors
6
- (e) Maximum number of Board Appointed Directors
5

7. Maximum term as a Director

A Term after election with the option to stand for another Term.

8. Maximum total combined years of appointment as a Director and as the Chair

A Term after election with the option to stand for another Term, followed by another option to stand for another Term, followed by another option to stand for another Term

Schedule 3

Transitional Provisions

1. Board members

- (a) Subject to the Corporations Act, all persons who are members of the Board (or similar governing committee) at the time of the adoption of this Constitution (“**existing Board members**”) remain as members of the Board until they resign or are removed from Board membership in accordance with this Constitution, or their term of office (under the constitution that applied prior to the adoption of this Constitution) otherwise would expire.
- (b) All existing Board members are deemed to be Member Elected Directors, irrespective of whether the total number of Member Elected Directors exceeds the number in item 6(d) of Schedule 2.
- (c) Until the number of Member Elected Directors (through resignation, removal or expiry of term of office) reduces to the number in Item 6(d) of Schedule 2, any new Director appointed to the Board must be a Board Appointed Director.

2. Membership

- (a) Subject to the person applying for Membership in the relevant Class in accordance with this Constitution, each person who is a “Member” of the Organisation at the date of adoption of this Constitution will continue as a “VIP Board Alumni Member” as so Prescribed in the By-laws.
- (b) The rights, privileges and obligations of Membership as set out in this Constitution and the By-laws will apply to the Member as from the date of adoption of this Constitution.

3. Chair, Auditor and Secretary

The chair, auditor and secretary of the Organisation prior to the adoption of this Constitution continue in their respective offices subject to the terms of this Constitution.

4. Generally

The transitional provisions of Section 10I of the Associations Incorporation Act 1987 (WA) or Section 100 of the Associations Incorporation Act 2015 (WA) (as applicable) apply.

Schedule 4

By-laws

1. Membership Classes and Membership Rights

- (a) Members may be admitted to the following five (5) classes of Membership:
- (i) Student Member
Available to students enrolled in an approved course at a Tertiary Institution and/or students enrolled in Secondary school.
 - (ii) Emerging Industry Member
Available to individuals from within and interested in the design industry.
 - (iii) Established Industry Member
Available to individuals from within and interested in the design industry with more than five (5) years' experience.
 - (iv) Corporate Member
Available to corporates that seek design industry insights and VIP treatment.
 - (v) A VIP Alumni Member
Available to individuals who:
 - (A) have made a significant contribution to the organisation and who have been invited by the Board to apply for membership; and/or
 - (B) have served as Board Members.
- (b) Voting Rights
- (i) Only VIP Alumni Members, Corporate Members and Established Industry Members are entitled to Voting Rights as well as being entitled to General Membership Rights.
- (c) General Membership Rights
- (i) General Membership Rights are rights of Members to receive notices of general meeting and to attend and, subject to the discretion of the chair of the meeting, speak at general meetings of Members.
 - (ii) General Membership Rights do not include Voting Rights.
 - (iii) General Membership Rights also give Members rights to receive such further communications and information, and such other opportunities to participate in the affairs of the Organisation as the Organisation may from time to time determine.
- (d) Corporate Membership
- (i) Companies or other body corporates may apply to become Corporate Members.
 - (ii) A Corporate Member may by such means as are Prescribed, appoint in writing a natural person to act as its Representative at meetings of and for the purposes of the Organisation and may revoke an appointment so made and appoint another natural person in the place of the Representative whose appointment is revoked.
 - (iii) A Representative is entitled to attend at meetings and exercise the same powers on behalf of the appointor Corporate Member as the appointor Corporate Member could exercise if it were an individual Member.
 - (iv) A Corporate Member is responsible to ensure that its Representative complies in all respects with item 2(d) of this Schedule 4 as if the Representative was a Member.

(e) Membership Benefits

The Board may from time to time determine Membership Benefits with respect to any Class of Membership and any variation to such Benefits from time to time. Upon the adoption of this Constitution the benefits to be provided to Members are as follows:

- (i) Student Members are entitled to the following benefits:
 - (A) industry e-alerts;
 - (B) 1 x free of charge ticket to the Industry Forum Series;
 - (C) discounted ticket offers.
- (ii) Emerging Industry Members are entitled to the following benefits:
 - (A) industry e-alerts;
 - (B) 1 x free of charge ticket to the Industry Forum Series;
 - (C) 1 x free charge ticket to the WA Fashion Awards;
 - (D) discounted ticket offers;
- (iii) Established Industry Members are entitled to the following benefits:
 - (A) industry e-alerts;
 - (B) 2 x free of charge tickets to the Industry Forum Series;
 - (C) 1 x free charge ticket to the WA Fashion Awards;
 - (D) discounted ticket offers;
- (iv) Corporate Members are entitled to the following benefits:
 - (A) recognition in event programs and digital media channels;
 - (B) industry e-alerts;
 - (C) 2 x free of charge tickets to the Industry Forum Series;
 - (D) 1 x free of charge ticket to select Perth Fashion Festival events;
 - (E) discounted ticket offers;

VIP Alumni Members are entitled to the benefits determined by the Board from time to time.

2. Membership Fees and Responsibilities

The Board may from time to time determine the Fee payable with respect to any Class of Membership and any variation to such Fee from time to time with power to waive or forgive the payment of any Fee either for a particular Member or for a class or designated group of Members.

- (a) Upon the adoption of this Constitution the Fees payable by Members are as follows:
 - (i) Student Member - \$75 plus GST
 - (ii) Emerging Industry Member - \$120 plus GST
 - (iii) Established Industry Member - \$200 plus GST
 - (iv) Corporate Member – \$500 plus GST
 - (v) VIP Alumni Member – Nil
- (b) Members shall pay the Fee applicable to their Class of Membership annually, against the Organisation's tax invoice therefor, in such manner and at such time determined from time to time by the Organisation.

- (c) By applying for and/or accepting Membership and in consideration of the Organisation's acceptance of the person as a Member, each Member agrees:
 - (i) to comply with and be bound by the provisions of the Constitution, the By-laws and the Policies for the time being in force;
 - (ii) not to do any act deed or thing that reasonably may bring the Organisation into disrepute, or otherwise reasonably may be prejudicial to the community standing, good name and reputation of the Organisation;
 - (iii) to notify the Company Secretary when personal contact information have changed in a timely manner for the purposes item 4.1(a) of this Schedule 4;
 - (iv) to comply with Article 1.2(c) of the Constitution.
- (d) For the purposes of Article 3.2(a)(i) of the Constitution the Prescribed rate of interest is simple interest of 10% per annum calculated daily.

3. Appointment of Member Elected Directors

- (a) Nominations for the election of Member Elected Directors are to be in writing signed by the nominees and delivered to the Secretary forty-five (45) days at least before the relevant meeting of Members or, at the discretion of the Chair, at least before the issue of the notice of the meeting of Members.
- (b) Duly nominated candidates for Member Elected Directors must be elected by a majority vote at a general meeting even if the number of candidates does not exceed the number of available positions to be filled.
- (c) Elections will take place by way of ballot in a manner determined by the Board.
- (d) Ballot papers will be prepared containing the names of the candidates in alphabetical order for distribution and voting upon by eligible Members.
- (e) If there are more candidates for election than the number of positions available, then the priority ranking of those candidates for the available positions will be as follows:
 - (i) rank all candidates by the number of votes in their favour with the candidate with the most votes first and then in descending order to the candidate with the least votes;
 - (ii) eliminate any candidate who did not receive a majority of votes in their favour;
 - (iii) successively allocate each available position to the candidate with the most relative number of votes in their favour, removing from the list each candidate who has been allocated an available position;
 - (iv) in the case of a draw in the number of votes for the only, or last available position the deadlock will be resolved and the outcome determined by the Chair by the "drawing of straws".
- (f) Persons nominating for election or appointment as Member Elected Directors or Board Appointed Directors, and Directors standing for re-election must provide to the Board (or to a committee of the Board as nominated by the Board) all information and confirmations as may be required in accordance with these By-laws.

4. Miscellaneous By-laws

4.1 Register of Members

- (a) The Secretary, through the GM, will maintain in its Register of Members, sub-registers for Classes, Representatives of corporate Members and any other designated class of Member from time to time.

- (b) The information to be maintained in the register will at least include the following with respect to the relevant Member:
 - (i) full name;
 - (ii) address;
 - (iii) telephone and contact particulars
 - (iv) such other information as a Secretary or GM or Board may from time to time consider it appropriate to record

4.2 Proxy Form

A form of proxy substantially in accordance with Prescribed Form BL1 is to be acceptable at proceedings at general meetings.

4.3 Time periods

Where in these By-laws or the Constitution a time or date is prescribed by which, or within which, a certain action should take place, the Chair has the discretion, in the interests of efficiency of administrative practice and convenience to the Organisation, by notice in writing given at any time to the Secretary, to waive strict compliance with that time or date and to set an alternative time or date for the purpose with respect to that particular occasion.

4.4 Use of Power of Attorney

- (a) The Organisation by Board resolution may grant a power of attorney to certain persons in the terms prescribed in that power of attorney.
- (b) The Board may also adopt a policy direction/protocol for use of the power of attorney. Any such policy direction/protocol so adopted from time to time will be deemed to form part of this By-law.

5. Governance Charter

- (a) The Board may resolve to adopt a governance charter or similar instrument setting forth a number of governance related policies, structures, principles, protocols and practices relevant to the Organisation, its affairs, its Members and its personnel.
- (b) Any such governance charter or similar document so adopted shall have binding force and effect as a By-law under this section.

Form No: BL1
Form of Proxy

To: The Board
Fashion Council WA Limited

To: Fashion Council WA Limited (**FCWA**)

I, of

being a Member of FCWA appoint

*[the meeting Chair;]

[..... of]

as my proxy to vote for me and on my behalf

*[at the meeting of FCWA to be held on the

.....day of 20.....]

*[all meetings of FCWA until this proxy is revoked],

(*) delete as applicable

and in accordance with the following voting instructions in respect of the resolutions proposed at the meeting of FCWA to be held on [*insert date*]:

Resolution	For	Against	Abstain	Proxy's discretion
1. []	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. []	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. []	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. []	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Note: If you wish to direct your proxy how to vote, place a mark on the appropriate box. The direction will be invalid if a mark is made against more than one box for a particular item.

Dated the day of 20.....

.....
Member (signature)