

Constitution of The Artists' Foundation of Western Australia

ABN 83 009 181 024

**a company limited by guarantee
formed for charitable not-for-profit purposes**

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CONSTITUTION OF THE ARTISTS' FOUNDATION OF WESTERN AUSTRALIA

a company limited by guarantee formed for charitable not-for-profit purposes

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1. 1. GENERAL

1.1 Name of the Company

The name of the company is The Artists' Foundation of Western Australia Limited.

1.2 Definitions

In this constitution:

ACNC Act means the *Australian Charities and Not-for-profits Act 2013* (Cth).

ACNC means the Australian Charities and Not-for-profits Commission.

AGM means "Annual General Meeting" as provided for in clause 6.2.

Board and **Directors** both mean the board of directors of the Company.

Board Member and **Director** both mean an individual member and director of the Board.

Chair, Deputy Chair, Secretary and **Treasurer** are the persons elected pursuant to clause 3.3(e)(i).

Company means The Artists' Foundation of Western Australia Limited.

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

Managing Director means an individual appointed elected pursuant to clause 7.2.

Members mean the individuals who belong to the Company.

Ordinary Member means an individual who belongs to the Company.

Term is the period of office of a Director as prescribed in clause 3.5.

1.3 Exclusion of Replaceable Rules

Subject to Part 2B.4 of the Corporations Act, the replaceable rules must not apply to the Company.

1.4 Type of Company – its nature, objects and powers

(a) The Company:

- (i) is a not-for-profit public company limited by guarantee, which is established to be, and continue as, a charity.
- (ii) will operate predominantly for the promotion, development and attainment of its objects;
- (iii) will apply its profits (if any) or other income in promoting its objects; and
- (iv) is not carried on for the purpose of profit or gain to its individual members.

(b) The Company is the peak membership body for visual artists in Western Australia. The objects of the Company are the following:

- (i) to promote the image and interests of the members of the Company whose profession is within the visual arts sector; and
- (ii) to provide services to members of the Company, and other arts practitioners where appropriate, to assist them to improve their public profile, creative development and income earning capacity.

(c) Solely for the purposes of carrying out the objects, but not otherwise, the Company must have the legal capacity and all the powers of a natural person. The powers set forth in subsection 124(1) of the Corporations Act must apply to the Company except insofar as they are inconsistent with the objects of the Company.

1.5 Limited liability of members

The liability of the Members is limited to the amount of the guarantee in clause 1.6.

1.6 Members' guarantee

Every Ordinary Member of the Company undertakes to contribute an amount not exceeding one dollar (\$1) to the property of the Company in the event of it being wound up while that person is a member or within one year thereafter for:

- (a) payment of the debts and liabilities of the company contracted before the time the

- membership ceased;
- (b) the costs, charges and expenses of winding up; and
- (c) for an adjustment of the rights of contributories among themselves.

1.7 Application of income – Not-for-profit

- (a) The assets and income of the company must be applied solely in furtherance of the objects of the company, as set forth in clause 1.4(b) of this constitution.
- (b) No part of the assets or income must be distributed, whether directly or indirectly, by way of dividend, bonus or otherwise to any member of the Company.
- (c) No remuneration or other benefit in money or money's worth must be paid or given by the Company to any member who holds any office of the Company.
- (d) Nothing contained in this clause prevents the payment in good faith of or to any member for:
 - (i) any services rendered to the company, whether or not as an employee;
 - (ii) goods supplied to the company in the ordinary and usual course of operation;
 - (iii) interest on money borrowed from any member;
 - (iv) rent for premises leased or let by any member to the company; or
 - (v) any out-of-pocket expenses incurred by the member on behalf of the company provided that the payment must not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

1.8 Distribution of property on winding-up

If the Company is to be wound up or deregistered:

- (a) application for deregistration may be made on Form 6010 (see the Corporations Act) if:
 - (i) all members agree to de-register;
 - (ii) the company is not carrying on a business;
 - (iii) the company has paid all penalties and fees under the Corporations Act;
 - (iv) the company has no outstanding debts; and
 - (v) the company is not engaged in any legal proceedings.

Otherwise, if the company is wound up, it will be done in accordance with section 491 of the Corporations Act.

- (b) any property or money remaining after its debts have been paid must be given to one or more organisations that are non-profit organisations with similar purposes to the company. The organisation(s) is (are) to be determined by the members at or before the time of dissolution.
- (c) the Company must notify the ACNC and the Register of Cultural Organisations of this fact.

1.97 Financial Year

The Financial Year of the Company is from 1 January to 31 December, unless the Directors pass a resolution to change the financial year.

2. MEMBERS

2.1 One class of membership of the Company

There shall be one class of members of the Company, namely "Ordinary Members". The Board may approve any number of categories of membership from time to time.

2.2 Eligibility to become a member of the Company

To be eligible for membership of the Company, an applicant for membership must be:

- (a) a person eighteen (18) years or over.

2.3 Application and determination of membership

- (a) An application for membership must meet the requirements as approved by the Board as may be varied from time to time.
- (b) An applicant for membership is taken to be admitted as an Ordinary Member upon the Board approving the application.
- (c) If the Board refuses a membership application, the Secretary must write and advise the applicant.
- (d) For the avoidance of doubt, there must be no limit on the number of members that the Company may accept.
- (e) If the Board approves an application, the secretary must as soon as possible enter the new member on the register of members, and write to the applicant to tell them that their application was approved and the date their membership started.

2.4 Members' fees

The cost of membership of the company is an annual fee that must be determined by the Board.

2.7 Rights and duties of members

- (a) Each individual member has full voting rights at general meetings of members and special meetings of members, including all special resolutions.
- (b) Each individual member must act in accordance with the values of the company.

2.8 Register of members

The Company must establish and maintain a register of members. The register of members must be kept by the Secretary of the Company and must contain:

- (a) For each current member:
 - (i) name;
 - (ii) address;
 - (iii) any alternative address nominated by the Member for the service of notices; and
 - (iv) date the Member was entered on to the register.
- (b) For each person who stopped being a member in the last 7 years:
 - (i) name;
 - (ii) address;
 - (iii) any alternative address nominated by the member for the service of notices; and
 - (iv) dates the membership started and ended.

The register must be set out conveniently and be able to be used as an index of members. The register of members must be kept safe and private, and must be used solely for the objects of the company unless explicit permission is given to release personal information by the member concerned.

2.9 Affiliates

The Company may establish structures and procedures to enable organisations and individuals to support the Company. These 'Affiliates' may include, but are not limited to, clients, patrons, supporters, local government, corporate, arts industry, educational institutions. The titles of the structures may vary from time to time and may include specific qualification criteria and joining fees. Qualification criteria, titles, fees, and procedures may be varied from time to time by the Board. 'Affiliates' do not have voting rights and cannot nominate to the Board.

2.10 Cessation of membership

- (a) The Board has the right, subject to the rules of natural justice and by a unanimous decision, to cancel the membership of an Ordinary Member or Members for actions deemed to be detrimental to the cause and objects of the company.
- (b) The Board must remove from the membership record the name and particulars of any Ordinary Member or Members who ceases to be a member of the Company, and must maintain a file or files of ceased members.
- (c) A person who has ceased to be a member of the Company may be readmitted to membership in accordance with the normal requirements for membership.
- (d) An Ordinary Member that fails to pay the annual fee on the date which it becomes due and payable shall, at the discretion of the Board, no longer have any entitlement to the privileges of membership but the Ordinary Member may be reinstated in the discretion of the Board on payment of all arrears.

3. BOARD OF DIRECTORS

3.1 Composition of the board of directors

The Company shall have:

- (a) up to five (5) directors elected pursuant to clause 3.3; and
- (b) up to four (4) directors co-opted pursuant to clause 3.4;
who shall be collectively known as the "board of directors".

- (c) In the event of a vacation of office of a director pursuant to clause 3.8 of an elected director the remaining directors may appoint a member to take his, her or their place (if more than one has vacated) and which director is a co-opted director pursuant to clause 3.4.

3.2 Eligibility of directors

- (a) To be eligible for election to the office of Director of the Company, a person must have been an Ordinary Member of the Company for at least one year prior to nomination. To remain eligible as an elected director of the Company, a director must remain a member of the Company at all material times during his or her elected term.
- (b) To be eligible for election or co-option to the office of Director of the Company, a person cannot be a full-time or part-time employee of the Company.
- (c) To be eligible for co-option to the office of Director of the Company pursuant to clause 3.4, a person must be, or must become, a member of the Company. To remain eligible as a co-opted director of the Company, a director must remain a member of the Company at all material times during his or her co-opted term.
- (d) A Director who has served for a term of eight (8) consecutive years will be eligible for election or co-option to the Board if at least two (2) years have passed since the end of that eight (8) consecutive year term.

3.3 Nomination and Election of Directors and Officers

- (a) An Ordinary Member, may nominate himself or herself, or be nominated by another Ordinary Member, for election to the office of Director.
- (b) Nominations for the Board shall be called in the appropriate form not exceeding twenty-eight (28) days and not less than fourteen (14) days prior to the relevant AGM.
- (c) If the number of nominations exceeds the number of vacancies to be filled, then a ballot for the election of directors of the company shall be conducted in such usual and proper manner as the Board may direct. Ballots conducted at the AGM may not have results announced until a time at or after the AGM at the directors' discretion having regard to the need for counting, scrutiny and validation of votes.
- (d) Each duly elected director shall take office immediately after the declaration of the result of the ballot at which they are elected.
- (e) At the first board meeting after each AGM, the Directors shall:
 - (i) elect from amongst their own, a Chair, a Deputy Chair, a Treasurer and a Secretary, in that order;
- (f) If the number of nominations exceeds the number of vacancies to be filled, a ballot for the election of the Chair, and Deputy Chair, and Treasurer and Secretary shall be conducted and decided by a simple majority and in the event of a tie, a second ballot between the tying candidates shall be conducted.

3.4 Nomination and Co-option of Directors

The Board may co-opt an eligible person or eligible persons:

- (a) either as a replacement for an existing co-opted director or as a new co-opted director by nominating a person to act as that director. If the nominee accepts that nomination, the nominee will become a co-opted director. Co-option of directors in this way shall be undertaken at the last Board meeting of each calendar year; or
- (b) to fill an absence of an elected or co-opted director in the Board by way of defective appointment, casual vacancy, resignation, removal or other such absence, by nominating a member or person to act as that director. If the nominee accepts that nomination, the nominee will become a co-opted director. Co-option of directors in this way shall be taken at any time., by majority of the board.

3.5 Term of office

A Director of the Company:

- (a) who is elected pursuant to clause 3.3 may hold office for a period of two (2) years commencing from the AGM.
- (b) who is co-opted pursuant to clause 3.4(a) may hold office for a period for two (2) years commencing from start of the calendar year.
- (c) who is co-opted pursuant to clause 3.4(b) to fill an absence in the Board that relates to a co-opted position, may hold office for a period of up to one (1) year, which will end at the end of current calendar year.

- (d) who is co-opted pursuant to clause 3.4(b) to fill an absence in the Board that relates to an elected position, must meet the eligibility criteria in clause 3.2(a) and may hold office for a period of up to one (1) year, which will end at the next AGM.
- (e) may hold that office for a maximum of eight (8) consecutive years, and must not serve as a Board Member for a period of more than eight (8) consecutive years.

3.6 Defective appointment

All acts done by a meeting of the Board or of a committee of the Board or by any person acting as a Board Member are valid, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be, or act as, a Board Member, or that a person was qualified to be a Board Member or to be a member of a committee of board members.

3.7 Removal of directors

The board may remove a Director from the Board if, in the opinion of the Board, the Director has been guilty of conduct detrimental to the interests of the Company or the Director's continued membership of the board is otherwise detrimental to the interests of the Company. The forced removal of a Director requires:

- (a) at least two-thirds majority vote from the entire Board, including the member in question; or
- (b) a vote of no-confidence passed by a special resolution of the Members.

3.8 Vacation of office (casual vacancies)

The office of a board member shall become vacant if a board member:

- (a) dies;
- (b) resigns from the board;
- (c) ceases to be resident in the State;
- (d) becomes bankrupt or applies to take advantage of any law relating to bankrupt or insolvent debtors or compounds with the member's creditors, or makes any assignment of the member's estate for their benefit;
- (e) becomes an infirm person or incapable patient within the meaning of the *Mental Health Act* or *Public Trustee Act*;
- (f) fails, without leave granted by the Board, to attend three consecutive meetings of the board;
- (g) ceases to be a member of the Company;
- (h) is disqualified from acting as a director pursuant to Part 2D.6 of the Corporations Act subject to section 103B of the Corporations Act.

In the event of a vacancy or vacancies in the board, the remaining board members may act but, if the number of remaining board members is not sufficient to constitute a quorum at a board meeting they may act only for the purpose of increasing the number of board members to a number sufficient to constitute such a quorum or of convening a general meeting of the Company.

3.9 Resignation of directors

A Director may resign effective upon giving 28 days written notice to the Chair, the Secretary, or the Directors, unless the notice specifies another time for the effectiveness of the resignation. No Director may resign if the Company would then remain without a duly elected Director or directors in charge of its affairs.

3.10 No Remuneration/Compensation of directors

Director's roles are voluntary. There is no provision for compensation, except that there must be allowed reasonable advancement or reimbursement for expenses incurred in the performance of duties. Under special circumstances, the Board can agree compensation to a Director. A two-thirds majority vote is required.

3.11 Board Member's other interests

- (a) A Board member who is employed by the Company or who has a contractual or other relationship with the Company for profit may still be a Board Member.
- (b) As per 3.2 (b) a Board Member cannot be an employee of the Company.

- (c) A Board Member may be a shareholder in, or director of, or hold any other office or place of profit with any other company or business or organisation that has a position of profit with the Company and still be a Board Member.
- (d) A Board Member who has a relationship contemplated by 3.11 (a) or (b) is not accountable to the Company for any benefit or profit received as the beneficiary of that relationship but must for the avoidance of doubt declare the existence of the relationship.
- (e) A Board Member shall be deemed not to be interested or to have been at any time interested in any contract or arrangement by reason only that it is made with, for the benefit of, or on behalf of a related company, that he is a shareholder in that related company.
- (f) Every Board Member shall observe the provisions of section 191 of the Corporations Act in relation to declaration of interests.
- (g) A Board Member may not vote as a Board Member and in all respects may not act as a Board Member in relation to any contract or arrangement in which he is interested, including, without limiting the generality of the foregoing, in relation to the use of the Company's common seal.

4. POWERS AND DUTIES OF THE BOARD

4.1 Management of the Company

Subject to the Corporations Act and any other provision of this constitution, the business of the Company shall be managed by the Board, who may exercise all such powers of the Company as are not, by the Corporations Act or by this constitution, required to be exercised by the Company in a general meeting.

4.2 Borrowing

Without limiting the generality of clause 4.1, the Board may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for debt, liability or obligation of the Company or of any other person.

4.3 Attorneys

- (a) The Board may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being power, authorities and discretions vested or exercisable by the Board) for such a period and subject to any conditions they think fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the board may determine and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

4.4 Cheques etc.

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two board members or in such other manner as the board determines.

4.5 Securities to board members or members

If any Board Member or Ordinary Member of the Company shall become personally liable for the payment of any sum primarily due by the Company, the Board may create any mortgage, charge or security affecting the whole or any part of the assets of the Company by way of indemnity to secure the persons or person from becoming liable from any loss in respect of such liability.

4.6 Duties

The Directors must comply with their duties as Directors under common law (judge-made law) and in legislation, such as contained in the Corporations Act, in the ACNC Act and the Governance Principles contained in the Subdivision 45-B of the *Australian Charities and Not-for-profit Commission Regulations 2013*.

5. PROCEEDINGS AT BOARD MEETINGS

5.1 Convening meetings

The Secretary must convene a meeting of the Board if requested at any time to do so by a Board Member. Special meetings of the Directors may be called by the Secretary or by any two directors of the Company.

5.2 When the Directors meet

The Board shall meet together for the dispatch of business so often as the Chair or in the Chair's absence, the Deputy Chair, shall deem necessary but not less than once in each two months provided that those months where a general meeting is held such general meeting may, at the board's discretion, be deemed a board meeting.

5.3 Quorum for meetings

No business shall be transacted at any board meeting unless a quorum is present, comprising at least half of all Board Members. A quorum must be present for the whole Directors' meeting. Except as otherwise provided in this constitution, no business must be considered by the Board at any meeting at which the required quorum is not present, and the only motion which the chair must entertain at the meeting is a motion to adjourn.

5.4 Using technology to hold Board meetings

The Directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all directors. The Directors' agreement may be a standing (ongoing) one. A Director may only withdraw their consent within a reasonable period before the meeting. The meeting may not be recorded with any technology without all Board Members consent.

5.5 Conduct of meetings

The Chair must preside at all meetings of the Board. In the Chair's absence, an acting Chair must be chosen by a majority of the directors of the Company present at the meeting and fulfil the duties of the Chair. If a Director cannot attend a regular or special meeting, that Director can give his or her proxy by written request to another Director to vote on certain or all matters that may come before the Board at a meeting. The Secretary must keep cause to be kept and recorded minutes of all meetings of the Board.

5.5 Majority action as board action (passing resolutions)

Questions arising at any board meeting shall be decided by a majority of votes. A resolution passed by a majority of the board shall for all purposes be deemed a determination of the Board. In cases of any equality of votes, the Chair of the meeting shall have a second or casting vote.

5.6 Circular Resolutions of directors

- (a) The Directors may pass a circular resolution without a Board meeting being held.
- (b) A circular resolution is passed if all the Directors entitled to vote on the resolution sign or otherwise agree to the resolution set out in clause 5.6(c) or 5.6(d).
- (c) Each Director may sign:
 - (i) a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - (ii) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- (d) The Company may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- (e) A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clause 5.6(c) or 5.6(d).

5.6 Casting Vote, Restrictions on voting

In case of any equality of votes, the Chair of the meeting shall have a second or casting vote. A Director who has a material personal interest in a matter that is being considered at a Directors meeting must not be present while the matter is being considered at the meeting, or vote on the matter.

5.7 Committees

The board may delegate any of its powers to a committee or committees consisting of such of their number as they think fit. A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the board and a power so exercised shall be deemed to have been exercised by the board. The members of such a committee may meet and adjourn as it thinks proper. Questions arising at the meeting of a committee shall be determined by a majority of votes of the members present and voting. In the case of an equality of votes, the chair shall have a casting vote.

5.8 Written Resolutions

A resolution in writing signed by all the board members for the time being shall be as valid and effectual as if it had been passed at a meeting of the board duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more board members.

5.9 Notice of Board meetings

At least five (5) business days prior notice of a meeting of the board must be given by the Secretary, or by persons designated by the chairperson of the board, to each director of the board. Notice must be written and state the place, date and time of the meeting and the agenda of the meeting, and may be delivered by post or email.

6. PROCEEDINGS AT MEETINGS OF MEMBERS

6.1 General meetings called by Directors

The Directors may call a general meeting.

6.2 Annual General meetings

- (a) An AGM must be called at least once in each calendar year and within 5 months after the end of the financial year at such place that the board nominate. Each member is invited to participate in the AGM and each member has the right to vote on any issues raised and voted upon at the AGM.
- (b) The persons entitled to attend a general meeting shall be:
 - (i) Members, in person, or by proxy;
 - (ii) Board Members;
 - (iii) the Company's auditor;
 - (iv) such other person or persons as the meeting may approve.
- (c) Each member who is unable to attend the AGM is entitled to a proxy vote. The member can nominate a current Ordinary Member to vote on his or her behalf by sending a proxy form to the Secretary to be received at least three days before the AGM.
- (d) The board of directors must determine the location, the agenda and the procedures of the AGM.
- (e) The Chair must preside as chairperson of the AGM except in relation to any election for which the Chair is a nominee, or where a conflict of interest exists. If the Chair is not present, or is unwilling or unable to preside, any Director present may preside at that meeting only.
- (f) At each AGM the board shall submit to the members a written report which, in addition to any other particulars which they shall deem desirable shall contain a summary of the activities of the Company for the period since the previous report. Such report shall, before presentation at the AGM, be formally presented at the Board Meeting.
- (g) The ordinary business of the AGM shall be:
 - (i) to confirm the minutes of the last preceding AGM and of any general meeting held since that meeting;
 - (ii) to receive from the Board, auditors and employees of the Company reports on the transactions of the Company during the preceding financial year;
 - (iii) to elect members of the Board.
- (h) The AGM may transact special business of which notice is given in accordance with this constitution.
- (i) An extraordinary AGM may transact any business of which notice is given in accordance with this constitution.

6.3 Notice of general meetings

- (a) Notice of a general meeting must be given to all those entitled to receive notices pursuant to clause 13.4 which for the avoidance of doubt is every member and the auditor.
- (b) Notice of a general meeting must be provided in writing at least 28 days before the meeting.
- (c) A notice must comply with the requirements contained in the Corporations Act.
- (d) If a general meeting is adjourned for one month or more, the Members must be given new notice of the resumed meeting.

6.4 Special meetings

The Board, or a minimum of 5% of Members, may call for special meetings of Members. At least twenty-eight (28) days' notice of the special meeting to all members must be given. Every member is invited to participate in the special meeting and each member has the right to vote on any issues raised and voted upon at the special meeting.

6.5 Quorum for meetings of members

- (a) A quorum at all general and special meetings of members must consist of a minimum of 20 members eligible to vote at that AGM present in person or proxy. For the purpose of determining whether a quorum is present, a person attending as a proxy, or as a corporate representative, shall be deemed to be a member in person.
- (b) If a quorum is not present within 15 minutes after the time appointed for a general meeting, the meeting shall be dissolved.
- (c) The Chair may, with the consent of the meeting, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (d) When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given in the same manner as for the original meeting, but otherwise, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

6.6 Voting procedure

At any meeting a resolution put to the vote of the meeting must be decided on a show of hands (or if via teleconference by a call of "yes" or "no") unless a poll or secret ballot is demanded:

- (a) by the Chair; or
- (b) at least 5 members present in person or by proxy at the meeting entitled to vote on the resolution or by members holding 5% of the voting rights of all members.

6.7 Poll

- (a) If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chair directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chair or on a question of adjournment shall be taken forthwith.
- (c) A demand for a poll shall not prevent the continuation of the meeting for the transaction of other business.

6.8 Secret Ballot

- (a) If a secret ballot is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chair directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.
- (b) A secret ballot demanded on the election of a chair or on a question of adjournment shall be taken forthwith.
- (c) A secret ballot for a poll shall not prevent the continuation of the meeting for the transaction of other business.

6.9 Entitlement to vote

- (a) All Members must be entitled to vote at meetings, except for the Chair who must have no deliberate vote.

- (b) Where voting at meetings is equal the chairperson may exercise a casting vote.
- (c) Where at least 5 members or by members holding 5% of the voting rights of all members so request, the Company may hold a secret ballot.

6.10 Altering the constitution

This constitution must not be altered except by special resolution in accordance with the Corporations Act.

6.11 Objection to voting

An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered. Any such objection shall be referred to the chair of the meeting, whose decision to allow or disallow the vote shall be final. A vote that is allowed following not disallowed pursuant to such an objection is valid for all purposes.

6.12 Proxy votes

A vote given in accordance with the terms of a proxy instrument is valid notwithstanding the previous death or unsoundness of mind of the principal or the revocation of the instrument (or other authority under which the instrument was executed) if no intimation in writing of the death, unsoundness of mind or revocation has been received by the Company before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is executed.

7. 7. MANAGING DIRECTOR

7.1 Not a member of the board

The "Managing Director" (or "Chief Executive Officer") of the Company is not a member of the Board, and is a Director in name only.

7.2 Appointment and term of office

The Board may appoint a Managing Director from time to time.

7.3 Remuneration

A Managing Director shall, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary, commission, or participation in profits, or partly in one way and partly in another) as the Board may determine.

7.4 Powers

The Board may, upon such terms and conditions and with such restrictions as they think fit, confer upon a Managing Director any of the powers exercisable by them. Any powers so conferred may be concurrent with, or be to the exclusion of, the power of the Board Members. The board may at any time withdraw or vary any of the powers conferred on the Managing Director.

8. 8. COMPANY SECRETARY

The Company must have at least one secretary, who may also be a Director elected pursuant to clause 3.5 of this Constitution. A secretary of the Company shall hold office on such terms and conditions, as to the remuneration and otherwise, as the Directors determine. The role of secretary includes maintaining a register of the Company's members and maintaining the minutes and other records of general meetings (including notices of other meetings), Board meetings and circular resolutions.

9. 9. COMPANY SEAL

Means the common seal of the Company and includes any official seal of the Company. The Board shall provide for the safe custody of the seal. The seal shall only be used by the authority of the Board, or of the committee of the board members authorised by the Board to the use of the seal. Every document to which the seal is affixed shall be signed by a Board Member and countersigned by another Board Member, a secretary or another person appointed by the board to countersign that document or a class of documents in which that document is included.

10. 10. ACCOUNTS AND RECORDS

10.1 Accounting records to be kept

The Board shall cause proper accounting and other records to be kept by the Company and shall distribute copies of the Company's accounts and reports as required by the Corporations Act.

10.2 Audit

The Company shall comply with the requirements of the Corporations Act as to the audit of accounts, registers and records.

10.3 Inspection

The Board shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to inspection of Members other than the Board. An Ordinary Member, other than a Board Member, shall not be entitled to inspect any document of the Company except as provided by law or authorised by the Board or by the Company in the general meeting.

11. 11. MINUTES

11.1 Minutes to be kept

The Board shall make and cause to be kept in accordance with the Corporations Act:

- (a) minutes of proceedings of general meetings;
- (b) minutes and resolutions of Board meetings;
- (c) minutes of circular resolutions;
- (d) a copy of the notice of each AGM; and
- (e) appointments of officers and persons ceasing to be officers of the Company.

11.2 Signature of minutes

All minutes must be signed by the Chair of the meeting at which the proceedings took place or by the Chair of the next succeeding meeting.

11.3 Compliance with the Corporations Act

The Company and its Members shall comply with the requirements of the Corporations Act.

12. 12. NO DISTRIBUTIONS

12.1 No Distributions to Members

The income and property of the Company whencesoever derived shall be applied solely towards the promotion of the objects of the Company contained in clause 1.4(b) and no portion thereof shall otherwise be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever by way of profit to Members of the Company.

12.2 Reserves

The Board may set aside out of the profits of the Company such amounts as they may determine as reserves, to be applied at the discretion of the Board, for any purpose for which profits of the Company may be properly applied.

13. 13. NOTICES

13.1 Definition of notice

The word "notice" means anything written to or from the Company under any clause in this constitution. Any notice is subject to clauses 13.2 to 13.4, unless specified otherwise. Clauses 13.2 to 13.4 do not apply to proxy votes.

13.2 Services

A notice may be given by the Company to any Member either by serving it on him personally or by sending it by post or electronically to him at his address as shown in the Register of Members or the address supplied to him at his address as shown in the Register of Members or the address supplied by him to the Company for the purpose of giving notices to him.

13.3 Service by Post

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the day after posting and, in any other case, at the time at which the letter would have been delivered in the ordinary course of post.

13.4 Persons entitled to Notice

Notice of every general meeting shall be given to:

- (a) every Ordinary Member;
- (b) the auditor for the time being of the Company.

No other person is entitled to receive notice of general meetings.

14. 14. WINDING UP

If upon the winding up or dissolution of the Company there remains after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed to the Members of the Company, but shall be given or transferred to some institution, organisation or body of institutions, organisations or bodies having objects similar in whole or in part to the objects of the Company and its Memorandum of Association or constitution shall prohibit the distribution or its or their income and property amongst its or their Members to an extent at least as great as is imposed on the Company under or by virtue of the Memorandum of Association of the Company such institution, organisation or body or institutions, organisations or bodies to be determined by the Members of the Company at or before the time of dissolution and in default thereof by such judge of the Supreme Court of Western Australia as may have or acquire jurisdiction in the matter.

15. 15. INDEMNITY

Every Ordinary Member, auditor or agent of the Company shall be indemnified out of the property of the Company against any liability incurred by him in his capacity as Officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgement is given in favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is under the Code granted to him by the Court.

16. 16. INSURANCE

To the extent that it is permitted by the law (including the Corporations Act), and if the Directors consider it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.