AUSTRALIAN SECURITIES
& INVESTMENTS COMMISSION
022958746

CONSTITUTION

OF

WILLIAM FLETCHER FOUNDATION

Company Limited by Guarantee under the *Corporations Act 2001* (Cth)

A Cultural Organisation registered on the Register of Cultural Organisations

under section 30.300 of the *Income Tax Assessment Act 1997* (Cth)

IPC
30 AUG 2006

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

(a) **"AGM"** means annual general meeting;

(b) **"Alternate Director"** means any person approved by a majority of the other Directors to act as an alternate director under paragraph 13.2;

(c) **"Board"** means the board of directors of the Company;

(d) **"Business Day"** means a day on which banking corporations in New South Wales are open;

(e) **"Company"** means the William Fletcher Foundation;

(f) **"Constitution"** means this Constitution as amended or substituted;

(g) **"Corporations Act"** means the *Corporations Act 2001* (Cth) as amended;

(h) **"Director"** means a director of the Board of the Company;

(i) **"DGR"** means deductible gift recipient endorsed under subdivision 30-BA of the *Income Tax Assessment Act 1997* (Cth).

(j) **"Gift"** means a gift of money, property or deductible contributions;

(k) **"Gift Fund"** means the fund set up under the name of "William Fletcher Foundation Fund" to receive Gifts pursuant to s30.125(4) of the *Income Tax Assessment Act 1997* (Cth);

(l) **"ITAA"** means *Income Tax Assessment Act 1997* (Cth);

(m) **"Material Personal Interest"** in relation to a Director means an interest being or arising out of:

(i) any office, place or profit or employment held by the Director in or in respect of the Company (other than as Auditor) or a related corporation of the Company;

(ii) any office, place of profit, or employment held by the Director in or in respect of, or any membership of or relationship of creditor to, any other corporation or partnership whether or not the Company has any interest in, or dealings or potential dealings with, that other corporation or partnership;

(iii) any transaction to which the Director is a party or is in any other way, whether as principal, agent or otherwise, interested, and to which the Company is a party or in which the Company is in any other way interested; or

(iv) without limitation, any other interest of the Director or duty of the Director to a third party which interest or duty conflicts or may possibly conflict with the Directors' duties to the Company.

(n) **"Member"** means a person who is a Member under paragraph 6.1 of this Constitution;

(o) **"Ordinary Resolution"** means any resolution made at a general meeting of Members in accordance with paragraph 9.9 that is not a Special Resolution;

(p) **"Personally"** means personally served, sent by prepaid post, sent by facsimile or sent by e-mail.

(q) **"Responsible Persons"** means individuals with a degree of responsibility to the general community including justices of the peace, members of the clergy, church authorities, trustees or board members of a non-profit school or college, judges/magistrates, solicitors, accountants, directors/senior executives of large companies, medical practitioners and other professional persons, teachers in senior positions, persons holding public or elected office, people who hold (or have held) other public positions or people with honours.

(r) **"Seal"** means the common seal of the Company;

(s) **"Secretary"** means any person appointed to perform the duties of a secretary of the Company and includes an honorary secretary; and

(t) **"Special Resolution"** means a resolution of which notice is given pursuant to the Corporations Act and that is passed by at least 75% of the Members.

1.2 **Interpretation**

(a) A word or phrase that is given a meaning by the *Corporations Act 2001* (Cth) has the same meaning in this Constitution unless otherwise stated.

(b) Expressions referring to writing shall unless the contrary intention appears, be construed as references to any mode of representing or reproducing words in a visible form irrespective of medium or technology.

(c) Unless the context otherwise requires, where words are used in the singular they shall include the plural and plural words shall include the singular. Similarly, words referring to the masculine gender, feminine gender or which are gender neutral, shall always be taken as referring to the others.

(d) Headings are for convenience only and do not affect interpretation.

2. OBJECTS

2.1 **Objects of the Company**

The principal purposes and objects for which the Company has been established are to promote the visual arts as follows:

(a) To take over the unincorporated trust known as "The William Fletcher Trust" created pursuant to the provisions of the deed of trust dated 3rd March 1985 as amended;

(b) To assist any artist who is:

(i) talented in the fields of painting, drawing, printmaking and theatre design;

(ii) entering or engaged in a course of university education in New South Wales with particular preference for awards to assist in the support of artists of quality; and

(iii) in need of financial support for continuance of such education

(c) To assist young artists of promise who are in need or where additional support can be of help in the maintenance and advancement of their careers;

(d) To further the cause of art education and training in New South Wales;

(e) To preserve and enhance the memory of the artist the late William Fletcher by promoting knowledge of his work and of the high standards he considered proper for an artist;

(f) To subscribe to, become a member of and co-operate with any other association or organisation, whether incorporated or not, whose objects are altogether or in part similar to those of the Company provided that the Company shall not subscribe or support with its funds any association or organisation which does not prohibit the distribution of its income and property among its members and which is not approved by the Commissioner of Taxation for the purposes of Section 30-15 of the Income tax Assessment Act 1997.

(g) To do all such things as may be incidental to or conducive to the attainment of the objects of the Company, and to exercise the powers of the Company.

3. GIFT FUND

3.1 Company to maintain a Gift Fund

(a) The Company will maintain a Gift Fund:

(i) to which Gifts given to promote the Objects of the Company will be credited;

(ii) to which any money received by the Company because of such Gifts will be credited; and

(iii) that does not receive any other money or property.

(b) The public will contribute to the Gift Fund and the public will participate in the administration of the Gift Fund.

(c) The Gift Fund will be controlled and administered by a majority of Responsible Persons.

(d) The Gift Fund will only be used in accordance with the Objects of the Company.

(e) Gifts to the Gift Fund will be kept separate from any other funds of the Company.

(f) If the Company's DGR endorsement is revoked the Gift Fund property:

(i) shall not be paid to or distributed among the Members; but

(ii) shall be given or transferred to a fund, authority or institution to which income tax deductible gifts can be made.

(g) The Company will comply with any rules that the Treasurer and the Minister for Communications and the Arts make to ensure that Gifts made to the Gift Fund are only used for the Objects of the Company.

(h) The Company will give the Secretary to the Department of Communications and Arts, at intervals of 6 months, statistical information about Gifts made to the Gift Fund during the last 6 months.

4. INCOME

4.1 Income received to be applied toward the Objects of the Company

(a) All income and property of the Company and all income received by the Gift Fund shall be applied solely towards the promotion of the Objects of the Company. No portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to the Members of the Company.

(b) Provided that nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any Member, officer, or servant of the Company in return for any services actually rendered to the Company or to any Member in relation to any contract, right or claim in which he or she is interested and which arises otherwise than by their membership. Without limiting the generality of the foregoing, nothing herein shall prevent the payment for goods or services supplied by any Member in the ordinary or usual way of business, nor prevent the payment of interest for money lent or reasonable and proper rent for premises demised or let by any member to the Company.

5. WINDING UP AND DISSOLUTION OF THE COMPANY AND/OR THE PUBLIC FUND

5.1 Limited liability of Members

The liability of the Members is limited.

5.2 Winding up and Dissolution

(a) The Company may only be dissolved by a resolution of two-thirds of the Members of the Company present and voting at an AGM.

(b) If the Company is wound up while a Person is a Member or within one (1) year after the Person ceases to be a Member and the debts and liabilities of the Company exceed its assets that Member shall be liable to contribute to the property of the Company for debts and liabilities contracted before the Member ceased to be a Member. The Member shall also be liable for the cost of winding up and for the adjustment of the rights of the contributories among themselves. Notwithstanding this, the Member's total liability shall not exceed $100.

(c) If upon the winding-up or dissolution of the Company and/or the Gift Fund there remains any property, after satisfaction of all its debts and liabilities, such property:

(i) shall not be paid to or distributed among its Members; but

(ii) shall be transferred to a fund, authority or institution having similar objects to the Objects of the Company and whose rules shall prohibit the distribution of among its members and to which income tax deductible gifts can be made under Subdivision 30-B, s30-100 of the ITAA.

6. MEMBERSHIP

6.1 Member Eligibility

A Member of the Company shall be a Person that has:

(a) applied in writing to become a Member;

(b) agreed in writing to be bound by this Constitution;

(c) promised to comply with its financial obligations hereunder;

(d) complied with the criteria set out in paragraph 6.4; and

(e) been approved for Membership by the Board.

6.2 **Application for membership**

(a) Application for membership shall be made in writing to the Secretary and shall be in such form as the Board may from time to time prescribe. The application shall be accompanied by payment of a fee determined from time to time by the Board. If the application for membership is unsuccessful, the fee will be returned to the applicant.

(b) The decision to admit an applicant to membership requires a two-thirds majority of the Board.

6.3 **Consideration by Board**

Where the Board receives an application for membership it will consider the application at its next meeting or implement another procedure for the prompt consideration of the application.

6.4 **Criteria for membership**

To be eligible to be a Member an applicant must:

(a) have a demonstrated interest in the Objects of the Company;

(b) have a demonstrated expertise in the visual arts or in a related discipline; or

(c) have other skills that the Board considers desirable on the Board.

6.5 **Conditions of membership**

(a) A right or privilege or obligation that a Person has by reason of being a Member:

(i) is not capable of being transferred or transmitted to another Person; and

(ii) terminates upon cessation of that Person's membership.

(b) Members shall pay such fees and subscriptions to the Company as the Constitution or the Board may from time to time prescribe.

(c) The Board may vary any application conditions, fee or subscription payable from time to time in respect of individual applicants or Members.

(d) If a Member fails to pay a fee or subscription by a date specified by the Board, the Board may give the Member notice that:

(i) requires the Member to pay the amount due;

(ii) specifies a date (at least 10 Business Days after the date of the notice) on which, and a place at which, payment of the amount due must be made; and

(iii) states that if payment is not made on or before the date and at the place specified, the membership of the Member may be cancelled.

6.6 **Cancellation/Suspension of Membership**

If a Member fails to pay any fee or subscription by the date specified in the notice given under paragraph 6.5(d) the Board may:

(a) cancel the membership of that Member by giving the Member notice in writing of the cancellation; or

(b) suspend the membership of that Member until any amount payable is received. Where a Person is suspended, during the period of suspension, that Person remains liable for all the obligations of the Member but is not entitled to any rights or privileges of a Member and has no right (without limitation) to:

(i) be present at, whether in person or by proxy, attorney or representative, a general meeting of the Company;

(ii) any information concerning the management or affairs of the Company; or

(iii) to participate in the business or the management of the Company.

6.7 **Register of Members**

The Company must enter approved applicants on the Register of Members (the **"Register"**) and keep the Register updated in accordance with the provisions of the Corporations Act.

The first Members of the Company shall be those persons who are trustees of the William Fletcher Trust at the time of incorporation of the Company.

7. CESSATION OF MEMBERSHIP

7.1 **Cessation of Membership**

(a) A Person ceases to be a Member in the following circumstances:

(i) if the Person dies;

(ii) if the Person becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;

(iii) if the Person is, in the opinion of the Board (excluding the vote of that Member), incapable of managing the Person's affairs;

(iv) if the Person becomes bankrupt, insolvent or under administration;

(v) if the Person cannot be found by the Board upon reasonable enquiry;

(vi) if by giving one month's notice in writing to the Secretary, the Person resigns its membership of the Company;

(vii) if the subscription of a Member remains unpaid and membership is cancelled in accordance with paragraph 6.6 (the Board may reinstate the Member and restore its name to the Register on payment of all arrears if the Board thinks fit to do so); or

(viii) if the Board resolves that the Person's membership shall cease.

(b) Upon the happening of any of the events in paragraph 7.1(a):

(i) the Person ceases to be a Member and all rights and privileges as a Member shall end (a Member shall, however, be entitled to re-admission at any time subject to the discretion of the Board); but

(ii) the Person shall nonetheless remain liable for and shall pay to the Company all moneys which at the time of it ceasing to be a Member may be due from it to the Company and in addition any sum not exceeding $100 for which it is liable as a Member of the Company under paragraph 5.2 of the Constitution, and shall not be entitled to be repaid the whole or any part of any money paid by it to the Company.

8. GENERAL MEETINGS

8.1 AGM

The Company must, in addition to any other general meeting held by it, hold an AGM as required by the Act.

8.2 Convening of general meeting

Any three Members of the Board may require the Executive Office or Secretary to convene a general meeting at any time.

8.3 Period of Notice

Subject to the provisions of the Act as to Special Resolutions and agreements to short notice of meetings, at least 21 days' notice of the meeting of the Company's Members must be given to the persons entitled to receive that notice. However an AGM or any other general meeting may be called on shorter notice if:

(a) in the case of an AGM, all Members entitled to attend and vote at that meeting agree beforehand; or

(b) in the case of any other general meeting, Members with at least 75% of the votes that may be cast at the meeting agree beforehand; but

(c) a shorter notice period is not permitted in the case of a meeting of Members where the meeting is convened to consider a resolution to remove a Director, appoint a replacement Director or appoint a Director who has attained the age of 72 years, or to remove an Auditor.

8.4 Notice of Meeting

The Company may give notice to the Member personally or by sending it via post, email or facsimile to the address in the Register or to the Alternate address (if any) nominated by the Member.

8.5 Contents of Notice

A notice of a general meeting must specify:

(a) the place, day and hour of the meeting;

(b) the general nature of the business to be transacted, except that the notice of an AGM is not required to state that the business to be transacted includes:

(i) the election of officers and other Members of the Board in the place of those retiring;

(ii) the consideration of the accounts and the reports of the Directors and Auditor; or

(iii) the appointment of and fixing of the remuneration of the Auditor; and

(c) if held in 2 or more places, the technology that will be used to facilitate this and any details required to enable a Member to attend that meeting; and

(d) if a Special Resolution is to be proposed at the meeting, set-out an intention to propose the Special Resolution and state the resolution.

8.6 **Holding Meetings**

Members are present at a general meeting if they attend in person or, if the Board determines, by telephone, video conferencing, or any digital technology which allows each participant to hear and be heard by each other person at the meeting.

8.7 **Omission to Give Notice**

The accidental omission to give notice of a general meeting to or the non-receipt of notice of the general meeting by a person entitled to receive notice, shall not invalidate the meeting or any resolution passed at that meeting.

8.8 **Cancellation or Postponement of Meeting**

Where notice of a general meeting has been given to the Members, the Board may by notice, postpone or cancel the general meeting.

8.9 **Adjournment of Meetings**

The Chair of a general meeting at which a quorum is present:

(a) may, with the consent of the meeting by Ordinary Resolution; and

(b) must, if so directed by the meeting by Ordinary Resolution,

adjourn the meeting from time to time and from place to place.

8.10 **Business at Adjourned Meeting**

An adjourned general meeting may only deal with the business that was left unfinished from the adjourned general meeting.

8.11 **Notice of Adjourned Meeting**

No notice need be given of an adjourned general meeting (or of the business to be transacted at it) except if a general meeting is adjourned for more than 1 month. When adjourned for 1 month or more, notice of the adjourned meeting must be given as if it were notice of the original meeting.

9. PROCEEDINGS AT GENERAL MEETINGS

9.1 **Representation of Members**

A Member may attend a general meeting at which it is entitled to be present in any of the following ways (if applicable to the Member):

(a) in person;

(b) by proxy;

(c) by power of attorney; or

(d) in the case of a Member which is a body corporate, by a representative appointed in respect of the general meeting, where the appointment sets out what the representative is appointed to do and any restrictions they may have.

9.2 **Quorum**

A general meeting may not deal with any business unless a quorum of **5** natural persons each of whom is, or represents a different Member, is present for that business.

9.3 **Failure of Quorum**

If a quorum is not present within 30 minutes from the time appointed for a general meeting:

(a) where the meeting was convened upon the requisition of Members under paragraph 8.2 – the meeting is dissolved; or

(b) in any other case:

(i) the meeting stands adjourned to the day, time and place, that the Board may determine and notify to the Members or, if no determination is made, the same day in the next week at the same time and place; and

(ii) at the adjourned meeting, if a quorum is not present within 30 minutes from the time notified for the meeting, the meeting is dissolved.

9.4 **Chair**

The Board may elect a Member to chair meetings of the Company and once elected as a chair, that Member may be the chair of any general meeting.

9.5 **Chair Absent**

Where a general meeting is held and:

(a) a chair has not been elected by the Board; or

(b) the chair elected by the Board is not present within 15 minutes after the time appointed for the holding of the meeting; or

(c) the chair is unwilling or unable to act,

the Members must elect one of their number to chair the meeting.

9.6 **Method of Voting**

(a) A resolution put to the vote of the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll is duly demanded.

(b) A demand for a poll may be made by:

(i) the chair of the general meeting; or

(ii) any **3** or more Members.

9.7 **Vote on a Show of Hands or Ballot**

Where a resolution is determined either by a show of hands or by a ballot:

(a) a declaration by the chair of the meeting that the resolution has been carried, carried unanimously, carried without dissent, carried by a particular majority or lost is conclusive evidence of the fact so declared without proof of the number or proportion of votes cast for or against that resolution; and

(b) an entry in the book containing the minutes of that general meeting recording that declaration is conclusive evidence of the fact that the declaration was made as so recorded.

9.8 **Conduct of Poll**

If a poll is properly demanded for a resolution:

(a) if the resolution is for the adjournment of the general meeting, the poll must be taken immediately at the place and in the manner that the chair of the meeting determines and declares;

(b) in all other cases, the poll must be taken at the time and place and in the manner that the chair of the meeting determines and declares;

(c) the result of the poll, as disclosed by the chair of the meeting at which the result is declared, is a resolution of the meeting at which the poll is demanded; and

(d) an entry in the book containing the minutes of the meeting at which the result is declared recording that declaration is conclusive evidence of the fact that the declaration was made as so recorded.

9.9 **Resolutions Determined by Majority**

Whether on a show of hands, on a poll or on a ballot, an Ordinary Resolution is passed if the number of votes cast in favour of that resolution is greater than one half of the total number of votes cast.

9.10 **Casting Vote of Chair**

If on a resolution proposed as an Ordinary Resolution at a general meeting there is an equality of votes), the chair of the meeting may exercise a casting vote.

9.11 **Circular Resolutions**

A resolution in writing sent to the Company by facsimile, email or post and which contains a digital or personal signature by a Member entitled to receive notice of and attend and vote at that general meeting, is as valid and effective as if that resolution had been passed at a general meeting of the Company. If such a resolution in writing is described as a special resolution or as an extraordinary resolution or as an elective resolution, it shall have effect accordingly. The meeting shall be taken to be held on the date that is twenty one (21) days after the date that the notice is sent to the Members.

9.12 **Several documents Suffice**

For the purposes of paragraph 9.11, 2 or more documents in identical terms, each signed by 1 or more Members are to be treated as 1 document provided that:

(a) each document is delivered to the Company's offices or a legible copy of it is received there by facsimile or electronic transmission;

(b) where more than one Member signs a document the date of execution of the document by each Member is set out; and

(c) the date of the resolution is the last date of execution of any of those documents by a Member.

9.13 **Voting Restrictions**

(a) A Member shall be eligible to vote if his/her membership has been approved and confirmed at the Board meeting held prior to the AGM at which a Member is to vote and the membership has not ceased pursuant to paragraph 7.

(b) A notice of a general meeting should specify that votes cast by particular persons not eligible to vote (whether specified by name or by description of particular classes of persons) are to be disregarded by the Company. The Company must take no account in determining the votes cast on a resolution relating to that business (whether a Special Resolution or an Ordinary Resolution) or for any other purpose, of any vote cast or purported to be cast by or on behalf of any of those persons in relation to that resolution.

(c) A Member shall be entitled to vote by post provided that the Company Secretary receives all postal votes at least forty eight (48) hours prior to the AGM or closure of the poll. The manner in which such postal voting is to be conducted shall be determined by the Board. For the purposes of this Constitution, a postal vote cast by a Member shall be deemed to be a vote cast by proxy by that Member.

9.14 **Proxies**

(a) A Member may vote in Person or by proxy or by attorney and shall have one (1) vote.

(b) A proxy appointed to attend and vote in accordance with the Corporations Act may exercise the rights of the Member on the basis and subject to the restrictions provided in the Corporations Act but not otherwise.

(c) A Member shall be entitled to instruct its proxy to vote in favour of or against any proposed resolutions.

(d) A form of appointment of a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) that the Board may prescribe or accept. The instrument appointing a proxy may be in the following:

*I of being a Member of the Company hereby appoint of or failing him/herof as proxy to vote for me on my behalf at the (annual or general as the case may be) meeting of the Company to be held on the day of and at any adjournment thereof. My proxy is hereby authorised to vote *in favour of/*against the following resolutions:*

(*Strike out whichever is not desired.)

Signed this day of 20 .

(e) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed (or a certified copy of that power or authority) shall be deposited at the registered office of the Company, at least forty eight (48) hours before the time for holding the relevant meeting.

(f) A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of such death, unsoundness of mind or revocation as aforesaid has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

10. DIRECTORS

10.1 **Number of Directors**

The Company shall have no fewer than **4** elected Directors (excluding Alternate Directors) and (subject to paragraph 10.2), not more than **10**.

10.2 **Power to Appoint**

The Board shall have the power in its absolute discretion, to appoint up to two (2) additional persons to be Directors who would provide particular skills or experience to the deliberations of the Board. They shall be entitled to vote at Board meetings and to sit on Sub-committees. They shall not have voting rights at general meetings. The term of appointment shall be until the immediately following AGM and they may be reappointed for a maximum of four (4) further terms after which he/she must stand down for at least one (1) year before being eligible for further appointment.

10.3 **Continuing Directors**

The Directors holding office at the date of adoption of this constitution continue in office subject to this Constitution.

10.4 **Compulsory Retirement**

At each AGM of the Company, each Director (including a Director appointed under paragraph 10.2) automatically retires and is eligible for re-election or re-appointment. If the Director is not re-elected or re-appointed, that retirement takes effect at the conclusion of that AGM).

10.5 **Directors May Resign**

A Director of the Company may resign at any time as a director by giving a written notice of resignation to the Company at its registered office.

10.6 **Qualification to be a Director**

No person may be a Director if he or she is:

(a) not permitted or entitled by the Corporations Act (or an order made under the Corporations Act) to be a Director; or

(b) of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health.

10.7 **Casual Vacancy**

The Board may at any time (except during a general meeting) appoint any person as a Director to fill a casual vacancy or to fill an additional board position. Any Director so appointed automatically retires at the next general meeting of the Company and is eligible for re-appointment at that general meeting. If the Director is not re-appointed that retirement takes effect at the conclusion of that general meeting.

10.8 **Number of Directors and additional Directors**

The Company may by Ordinary Resolution increase or reduce the maximum number of Directors permitted under paragraph 10.1.

10.9 **Appointment at AGM**

At any AGM at which a Director compulsorily or voluntarily retires, the Company may by Ordinary Resolution fill the office vacated.

10.10 **Notice of Nomination**

Except in the case of a Director retiring under paragraphs 10.4 or 10.5 or a person recommended for appointment by the Board, a person is only eligible to be appointed as a Director by Ordinary Resolution where the Company receives at its registered office at least 5 Business Days before the relevant general meeting both:

(a) a nomination of the person signed by at least 2 Members; and

(b) a consent to nomination signed by the person.

10.11 **Procedure for Election of Directors**

Where the number of persons nominated is less than or equal to the number of Directors who have retired, all persons nominated are automatically appointed as Directors. In any other case, a ballot must be conducted at the AGM.

10.12 **Procedure on Ballot**

No vote cast in a ballot to elect a Director is valid unless:

(a) the ballot paper bears the name of the Member casting the vote (and, if the Member is present at the general meeting by proxy, representative or attorney, that fact and the name of that proxy, representative or attorney);

(b) it is represented on the ballot paper by mark of either a tick or a cross; and

(c) it is in accordance with any additional instructions contained on the ballot paper.

10.13 **Vacation of Office**

The office of a Director automatically becomes vacant if the Director:

(a) is not permitted by the Act (or an order made under the Act) to be a Director;

(b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;

(c) is removed as a Director under the Act or this Constitution;

(d) either by him or herself or by an Alternate Director, fails to attend 3 consecutive Board without leave of absence from the Board;

(e) resigns by notice in writing to the Company; or

(f) ceases to be qualified to be a Director under paragraph 10.6.

10.14 **Removal of Director by Company**

The Company may by Ordinary Resolution remove any Director before the expiration of the Director's period of office and appoint any other person to replace the former Director.

10.15 **Removal of Director by Board**

Without limitation on paragraph 10.14, the Board may remove any Director by resolution on a ballot where the Director is absent from 3 consecutive meetings of the Board without the permission of the Board.

10.16 **Less than Minimum Number of Directors**

Where the office of a Director becomes vacant, the continuing Directors may continue to act except where the number of Directors falls below the minimum number set by paragraph 10.1, in which case the continuing Directors may act only:

(a) to appoint Directors up to that minimum number;

(b) to convene a general meeting; or

(c) in emergencies.

11. DIRECTORS' REMUNERATION

11.1 **No Remuneration**

No Director shall be entitled to remuneration for his/her services as director, but the Directors may, subject to receipt of supporting vouchers, authorise the payment by the Company of reasonable and proper out-of-pocket expenses incurred by a Director in the performance of his/her duties or otherwise in connection with the affairs of the Company.

11.2 **Remuneration for Extra Services**

If a Director, having been requested to do so by the Board, provides extra services or functions to the Company, the Company may remunerate that Director by the payment of a fixed sum determined by the Board.

12. DIRECTORS' DUTIES AND INTERESTS

12.1 **Scope of Directors' duties**

A Director may, without breaching his or her duty to the Company:

(a) have a Material Personal Interest; and

(a) hold any office, place of profit or employment, or be a member or creditor of any corporation or partnership, which does or could give rise to a Material Personal Interest.

12.2 **Transactions not Vitiated**

No transaction involving the Company will be vitiated, avoided or voidable merely because a Director has a Material Personal Interest in or in relation to that transaction.

12.3 **No Liability for Material Personal Interest**

No Director, nor any other person, is, merely by reason of a Director having a Material Personal Interest, liable to account for any profit or benefit received by the Director or any other person or to hold any property on any trust for the Company or to compensate the Company for any loss suffered by it.

12.4 **Declaration of Interests**

A Director need not declare any interest (including, without limitation, any Material Personal Interest) unless required to do so by the Constitution.

12.5 **Manner of Declarations**

A Director may make a declaration required by the Act either orally or in writing and is treated as having made a declaration where the existence, nature, character and extent of the interest appears on the face of a document tabled before the Board.

12.6 **Recording of Declarations**

The terms of each declaration made in accordance with the Act must be recorded in the minutes of the meeting of the Board at which it was made.

12.7 **Director may hold office of Company**

The Company may appoint a Director:

(a) to hold any office or place of profit of the Company (except that of Auditor) on terms determined by the Board; or

(b) alone or by a firm of which the Director is a member, to act in any professional capacity and the Director or that firm may be remunerated for so acting as if the Director were not a Director.

Remuneration payable to any Director who is an employee of the Company or a related corporation of the Company must not include a commission on or percentage of operating revenue.

12.8 **Interested Director may vote and be counted in Quorum**

A Director may be counted in a quorum and may vote at Board meetings notwithstanding that he or she has a Material Personal Interest or any interest required to be declared by the Act or otherwise.

12.9 **Execution of Instruments**

A Director may, notwithstanding a Material Personal Interest or other interest and regardless of whether that Material Personal Interest or other interest has been declared as required by the Act, participate in the execution of any instrument by or on behalf of the Company.

13. PROCEEDINGS OF THE BOARD

13.1 **Board Meetings**

(a) A Director may at any time and the Secretary shall upon the request of a Director, summon a meeting of the Board.

(b) The quorum necessary for the transaction of the business of the Board shall be **4** Directors.

(c) The Board may meet together in Person or by proxy or by conference telephone call, video link-up, facsimile transmission or any other means for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.

(d) Notice of each meeting of the Board:

(i) must be given to each Director (or Alternate Director);

(ii) may be given verbally, by post, telephone, email or facsimile message,

but the non-receipt of any notice of a Board meeting does not affect the validity of the convening of the meeting.

(e) The Board may determine the period of notice for each meeting of the Board. Until the Board otherwise determines, 24 hours notice is required. By majority decision, the Board may waive the notice requirement.

(f) Where the Board meeting is held by means of circulating the resolution(s) (whether by post, fax or electronically) or by telephone, video conference or other instantaneous means of conferring, the meeting shall be taken to be held on the date the last Director votes in writing as to the resolution(s) proposed for that meeting at the place where at least one of the Directors is located as is agreed by those Directors present at the meeting.

(g) The Board shall elect one of the Directors as chair and another 2 of the Directors as deputy chairs and shall determine the period for which each of those Directors is to hold that office. Where the Board holds a meeting and:

(i) has not appointed a chair or the chair is not present within 15 minutes of the time appointed for the holding of the meeting or is unwilling to act; and

(ii) has not appointed any deputy chair or no deputy chair is present within 15 minutes of the time appointed for the holding of the meeting or is unwilling to act,

the Directors present at the meeting may choose one of their number to be chair of that meeting.

(h) Every question arising and resolution dealt with at a meeting of the Board is to be decided by a majority of votes of the Directors present and voting on that resolution. Each Director/Alternate Director will have 1 vote on every question or resolution at a meeting.

(i) All acts done by any meetings of the Board or of a Sub-committee or by any Person acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director or Person acting as aforesaid or that the Directors or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

(j) The Board shall cause minutes to be made:

(i) of all appointments of officers and full-time employees;

(ii) of names of Directors present at all meetings of the Company and of the Board; and

(iii) of all proceedings at meetings of the Company and of the Board.

Such minutes shall be signed by the chair of the meeting at which the proceedings were held or by the chair of the next succeeding meeting. Such minutes shall be entered in the relevant minute book of the Company.

(k) A resolution in writing signed by all the Directors for the time being entitled to receive notice of a meeting of the Board 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 separate documents in like form, each signed by one or more Directors.

13.2 ***Alternate Directors***

Subject to this Constitution, each Director may appoint any person approved by a majority of the other Directors to act as an Alternate Director in the Director's place, either for a stated period or until the happening of a specified event, whenever by absence or illness or otherwise the Director is unable to attend to duties as a director. The appointment must be in writing and signed by the Director and a copy of the appointment must be given to the Board. The appointment takes effect on approval by a majority of the other Directors, or where the approval has been granted, at any later time specified in the appointment. The following provisions apply to any Alternate Director:

(a) *the appointment of the Alternate Director is terminated or suspended on receipt by the Company of notice in writing from the Director by whom the Alternate Director was appointed;*

(b) *the Alternate Director is entitled to receive notices of meetings of the Board and to attend and vote at the meetings if the Director by whom the Alternate Director was appointed is not present;*

(c) *the Alternate Director is entitled to exercise all the powers (except the power to appoint an Alternate Director) and perform all the duties of the Director, to the extent permitted by the Director by whom the Alternate Director was appointed;*

(d) *the Alternate Director is not, unless the Board otherwise determines, entitled to receive any remuneration as a Director of the Company;*

(e) *the office of the Alternate Director is terminated on the death of, or termination of office by, the Director by whom the Alternate Director was appointed;*

(f) *the Alternate Director is not taken into account in determining the number of Directors or rotation of Directors;*

(g) *the Alternate Director is, while acting as a Director, responsible to the Company for the Alternate Director's own acts and defaults; and*

(h) *an Alternate Director is not qualified to chair a meeting.*

13.3 **Sub-Committees**

(a) The Board may in its discretion establish one or more Sub-committee(s) to further the objects of the Company as defined herein, and:

(i) The members of any such Sub-committees shall be appointed by the Board. A member of a Sub-committee need not be a Member of the Company.

(ii) At least one Director shall sit on each Sub-committee.

(iii) Subject to paragraph (b), any Sub-committee so formed shall perform an advisory function only. All decisions with respect to the activities of the Sub-committees shall vest either in the Board or in the general membership, whichever applies.

(b) Notwithstanding paragraph 11.3(a)(iii), the Board may specifically delegate any of its powers to one or more Sub-committees and any Sub-committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Board. All such delegations shall be minuted and shall also be recorded in a Register of Delegations.

(c) A Sub-committee may elect a chair of its meetings. If no such chair is elected, or if at any meeting the chair is not present within fifteen (15) minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chair of the meeting.

(d) A Sub-committee may meet and adjourn as it thinks proper.

14. POWERS AND DUTIES OF THE BOARD

14.1 Powers and duties of the Board

(a) The Board shall have the general management of the business and funds of the Company and may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company subject only to any provisions of this Constitution and of the Corporations Act. No rule made by the Company in a general meeting shall invalidate any prior act of the Board or its Directors that would have been valid if that rule had not been made.

(b) The Board shall have power at any time, and from time to time, to appoint any Person to the Board to fill a casual vacancy. Any officer or other Director so appointed shall hold office only until the next following AGM.

(c) The Board shall have the power to appoint by power of attorney any person to be an attorney of the Company for a specified period and subject to the conditions determined by it.

(d) All cheques, promissory notes, 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 (2) Directors or in such other manner as the Board from time to time determines. Electronic payments may be made by a member of the Board with the approval of another Director.

15. ACCOUNTS

15.1 Accounts to be kept

(a) True accounts shall be kept of the sums of money received and expended by the Company and the Gift Fund and the matter in respect of which such receipt and expenditure takes place and of the property credits and liabilities of the Company.

(b) The Board shall keep proper accounting and records and shall distribute copies of every profit and loss account and balance sheet (including every document required

by the Corporations Act to be attached thereto) accompanied by a copy of the Auditor's report as required by the Corporations Act. Further, the Board shall cause to be made out and laid before each AGM a balance sheet and profit and loss account made up to date not more than five (5) months before the date of the meeting.

15.2 **Members' right of inspection**

The Board shall from time to time determine at what times and places and under what conditions or regulations the accounting and other records of the Company shall be open to the inspection of Members not being Directors. No Member who is not a Director shall have any right to inspect any account or book or paper of the Company except as conferred by statute or by this Constitution or authorised by the Board or by an AGM.

16. AUDITOR

16.1 **Auditor to be appointed**

A properly qualified Auditor shall be appointed and its remuneration fixed and duties regulated in accordance with the Corporations Act and this Constitution.

17. EXECUTION OF AGREEMENTS

17.1 **By 2 Directors or a Director and Secretary**

A document signed by a Director and by the Secretary or by 2 Directors and expressed to be executed by or on behalf of the Company shall have the same effect as if it were executed under Seal.

17.2 **By a duly authorised representative**

A document signed by a duly authorised representative and expressed to be executed by or on behalf of the Company shall have the same effect as if it were executed under Seal.

18. NOTICES

18.1 **Requirement to give notice**

Notice of every AGM shall be given to:

(a) every Member except those Members who have not supplied to the Company an address for the giving of notices;

(b) every Director; and

(c) the Auditor for the time being of the Company.

No other Person shall be entitled to receive notices of AGMs.

18.2 **Form of Notice**

A notice may be given by the Company to any Member either Personally or by sending it by post to its registered address, or to an address supplied by it to the Company for the giving of notices, or by facsimile transmission or by e-mail.

18.3 **Time of Service**

A notice is treated as being given to a person by the Company:

(a) on the Business Day after it is posted;

(b) on the day of facsimile transmission if transmission occurs on a Business day, otherwise on the next Business Day; or

(c) in any other case, on the day it is received by the Person.

19. INDEMNITY

19.1 Directors' Indemnity

Every Director or officer of the Board shall be indemnified by the Company against any liability arising out of the execution of the duties of office which it incurs in defending any proceedings, whether civil or criminal, in which judgment is given in its favour or in which it is acquitted. The indemnity shall not apply where the Director or officer of the Board has either been negligent or has committed a default or breach of trust.

20. ALTERATION OF THESE PARAGRAPHS

20.1 Alteration

The paragraphs of this Constitution may only be added to or altered by a resolution to be passed by no less than a seventy-five percent (75%) majority of all the Members of the Company present and voting at a AGM. Any alteration will be notified to the Australian Tax Office.

20.2 Bylaws

Notwithstanding anything contained in this Constitution, the Company may adopt any by-laws, standing orders or constitutional rules as may be passed from time to time at any AGM.