

CORPORATIONS ACT 2001  
COMPANY LIMITED BY GUARANTEE

CONSTITUTION

of

BlakDance Australia Limited

A.C.N.146102 758

## **Certificate of Registration of a Company**

This is to certify that

BLAKDANCE AUSTRALIA LIMITED

Australian Company Number 146 102 758

is a registered company under the Corporations Act 2001

and is taken to be registered in Queensland .

The company is limited by guarantee. The company is a public company .

The day of commencement of registration is the first day of September 2010.

Issued by the  
Australian Securities and Investments Commission  
on this first day of September, 2010.



Anthony Michael D'Aloisio  
Chairman

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**CORPORATIONS ACT 2001**  
**COMPANY LIMITED BY GUARANTEE**  
  
**CONSTITUTION**  
  
**OF**  
  
**BlakDance Australia Limited**

**1. Preliminary**

1.1. In this Constitution, unless the contrary intention appears:

'ACNC Act' means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

'Affiliate Member' means a member under clause 6.

'Auditor' means the Company's auditor.

'business day' has the same meaning as in the Corporations Act 2001.

'Company' means BlakDance Australia Limited A.C.N. 146 102 758.

'Constitution' means the constitution of the Company as amended from time to time.

'Corporations Act' means the Corporations Act 2001 (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

'Director' includes any person occupying the position of director of the Company.

'Directors' means all or some of the Directors acting as a board.

'Member' means a member under clause 5.

'Office' means the Company's registered office.

'Register' means the register of Members of the Company.

'registered address' means the last known address of a Member as noted in the Register.

'Representative' means a person appointed as such under clause 9.

'Seal' means the Company's common seal (if any).

'Secretary' means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if more than one person is appointed, any one or more of those persons.

1.2. In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning given to it in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

1.3. In this Constitution, except where the context otherwise requires:

- a) the singular includes the plural and vice versa and reference to a gender includes other genders;
- b) words importing natural persons include corporations;
- c) another grammatical form of a defined word or expression has a corresponding meaning;
- d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- e) headings are for ease of reference only and do not affect interpretation; and
- f) reference to a document or instrument includes the document or Instrument as novated, altered, supplemented or replaced from time to time;
- g) A\$, \$A, dollar or \$ is to Australian currency; and
- h) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

## **2. Replaceable rules**

To the extent permitted by law, the replaceable rules in the Corporations Act 2001 do not apply to the Company.

## **3. Objects**

3.1. The objects for which the Company is established are:

- a) To be the peak body and advocate for Aboriginal and Torres Strait Islander dance in Australia and internationally.
  - b) To connect Aboriginal and Torres Strait Islander choreographers and dancers with the market; and to actively cultivate participation, enjoyment, employment and presentation opportunities for Aboriginal and Torres Strait Islander choreographers and dancers, both in Australia and internationally;
  - c) To produce programs and events that enable Members to engage with the sector
  - d) To grow the dance sector, including industry, develop new markets by exploring new opportunities and learning from local and global best practice;
  - e) To capture live dance, interviews and stories to archive and showcase Aboriginal and Torres Strait Islander dance;
  - f) To incorporate Aboriginal and Torres Strait Islander cultural knowledge into the Company's governance and role model best practice protocol; and
  - g) To safeguard, maintain, innovate and preserve Aboriginal and Torres Strait Islander cultural expression, contemporary expression, knowledge and intellectual property.
- 3.2. The Company may only exercise the powers in section 124(1) of the Corporations Act to:
- a) carry out the objects in this clause 3; and
  - b) do all things incidental or convenient in relation to the exercise of power under clause 3.2(a).

#### **4. Not-for-profit**

- 4.1. The company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 4.2 and 56.
- 4.2. Clause 4.1 does not stop the company from doing the following things, provided they are done in good faith:
- a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the company, or
  - b) making a payment to a member in carrying out the company's charitable purpose(s).

#### **5. Membership - Admission**

- 5.1. Members of the Company must be:

- (a) Aboriginal or Torres Strait Islander individuals; or

- a) Organisations or corporations which are Aboriginal or Torres Strait Islander-owned and/or controlled.
- 5.2. Applications for membership of the Company must be in writing, signed by the applicant and in a form approved by the Directors in their absolute discretion.
- 5.3. The Directors will consider each application for membership at the next meeting of Directors after the application is received. In considering an application for membership, the Directors may, in their absolute discretion:
  - (a) accept or reject the application; or
  - (b) ask the applicant to give more evidence of eligibility for membership.
- 5.4. If the Directors ask for more evidence under clause 5.3(b), their determination of the application for membership is deferred until the evidence is given.
- 5.5. The Directors do not have to give any reason for rejecting an application for membership.
- 5.6. The company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
  - 5.6.1. for each current member:
    - a) name;
    - b) address; and
    - c) date the member was entered on to the register.
  - 5.6.2. for each person who stopped being a member in the last 7 years:
    - a) name;
    - b) address; and
    - c) dates the membership started and ended.
- 5.7. As soon as practicable following acceptance of an application for membership, the Secretary will send the applicant written notice of the acceptance and request payment of the applicant's entrance fee and first annual subscription, subject to clause 7.1.
- 5.8. Subject to clause 5.9, an applicant for membership becomes a Member when they are entered on the register of members.
- 5.9. If the entrance fee and first annual subscription of an applicant for membership is not paid within 30 days after the date the applicant is notified of acceptance of



their application for membership, the Directors may cancel their acceptance of the applicant for membership of the Company.

- 5.10. The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

## **6. Membership - Affiliate Members**

- 6.1. Organisations or corporations which are not Aboriginal or Torres Strait Islander-owned and/or controlled may apply to become affiliate members of the Company.
- 6.2. Affiliate members have the right to receive notice of meetings, to attend and to speak, but do not have the right to vote or to nominate persons for election as Directors.
- 6.3. A Representative of an affiliate member may not be a Director or office-bearer of the Company.

## **7. Membership- Subscriptions**

- 7.1. The Directors may determine the entrance fee and annual subscription payable by each Member or each category of Member.
- 7.2. The annual subscription period will commence on the First day of January of each year, and the annual subscription will be due in advance within 30 days of this date.
- 7.3. The first subscription payable by persons who consented to become Members in the application for the Company's registration will be payable within 30 days of the date from which subscriptions are determined by the Directors.
- 7.4. The Directors may determine that any Member admitted to membership in the second half of any subsequent year will pay only one-half of the annual subscription until that Member's next annual subscription falls due.
- 7.5. If a Member does not pay a subscription within 30 days after it becomes due the Directors:
- a) will give the Member notice of that fact; and
  - b) if the subscription remains unpaid 21 days from the date of that notice, may declare that Member's membership forfeited.

## **8. Ceasing to be a Member**

- 8.1. A Member's membership of the Company will cease:
- a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;

- b) if a majority of three-quarters of the Directors present and voting at a meeting of Directors by resolution terminate the membership of a Member:
  - i. whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Company;
  - ii. only after the Member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed;
- c) if membership is declared to be forfeited under clause 7.5(b);
- d) where the Member is an individual, If the Member:
  - i. dies;
  - ii. becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
  - iii. is convicted of an indictable offence;
- e) where the Member is not an individual, if:
  - i. a liquidator is appointed in connection with the winding-up of the Member; or
  - ii. an order is made by a Court for the winding-up or deregistration of the Member.

8.2. Any Member ceasing to be a Member:

- a) will not be entitled to any refund (or part refund) of a subscription; and
- b) will remain liable for and will pay to the Company all subscriptions and moneys which were due at the date of ceasing to be a Member.

## 9. Membership- Representatives

9.1. Any corporation or organisation which is a Member may by written notice to the Secretary:

- a) appoint a natural person to act as its representative in all matters connected with the Company as permitted by the Corporations Act ('Representative') ;and
- b) remove a Representative.

9.2. A Representative is entitled to:

- a) exercise at a general meeting all the powers which the corporation or organisation which appointed him or her could exercise if it were a natural person;
- b) stand for election as an office bearer or Director; and
- c) be counted towards a quorum on the basis that the Member corporation or organisation is to be considered personally present at a general meeting by its Representative.

- 9.3. A certificate executed in accordance with section 127 of the Corporations Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.
- 9.4. The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status and powers as a Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.
- 9.5. The appointment of a Representative may set out restrictions on the Representative's powers.

## **Dispute resolution and disciplinary procedures**

### **10. Dispute resolution**

- 10.1. The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
- a) one or more members;
  - b) one or more directors, or
  - c) the company.
- 10.2. A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 11 until the disciplinary procedure is completed.
- 10.3. Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 10.4. If those involved in the dispute do not resolve it under clause 10.3, they must within 10 days:
- a) tell the directors about the dispute in writing;
  - b) agree or request that a mediator be appointed; and
  - c) attempt in good faith to settle the dispute by mediation.
- 10.5. The mediator must:
- a) be chosen by agreement of those involved, or
  - b) where those involved do not agree:
    - i. for disputes between members, a person chosen by the directors, or
    - ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the company has its registered office.
- 10.6. A mediator chosen by the directors under clause 10.5(a)(i):

- a) may be a member or former member of the company;
- b) must not have a personal interest in the dispute; and
- c) must not be biased towards or against anyone involved in the dispute.

10.7. When conducting the mediation, the mediator must:

- a) allow those involved a reasonable chance to be heard;
- b) allow those involved a reasonable chance to review any written statements;
- c) ensure that those involved are given natural justice; and
- d) not make a decision on the dispute.

## **11. Disciplining members**

11.1. In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the company if the directors consider that:

- a) the member has breached this constitution, or
- b) the member's behaviour is causing, has caused, or is likely to cause harm to the company.

11.2. At least 14 days before the directors' meeting at which a resolution under clause 11.1 will be considered, the secretary must notify the member in writing:

- a) that the directors are considering a resolution to warn, suspend or expel the member
- b) that this resolution will be considered at a directors' meeting and the date of that meeting
- c) what the member is said to have done or not done
- d) the nature of the resolution that has been proposed, and
- e) that the member may provide an explanation to the directors, and details of how to do so.

11.3. Before the directors pass any resolution under clause 11.1, the member must be given a chance to explain or defend themselves by:

- a) sending the Directors a written explanation before that directors' meeting, and/or
- b) speaking at the meeting.

11.4. After considering any explanation under clause 11.3, the directors may:

- a) take no further action;
- b) warn the member;
- c) suspend the member's rights as a member for a period of no more than 12 months;

- d) expel the member;
  - e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause); or
  - f) require the matter to be determined at a general meeting.
- 11.5. The directors cannot fine a member.
- 11.6. The secretary must give written notice to the member of the decision under clause 11.4 as soon as possible.
- 11.7. Disciplinary procedures must be completed as soon as reasonably practical.
- 11.8. There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## **12. Calling general meeting**

- 12.1. Any Director may, at any time, call a general meeting.
- 12.2. A Member may:
- a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act; and
  - b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

## **13. Notice of general meeting**

- 13.1. Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 13.2. A notice calling a general meeting:
- a) must specify the place, date and time of 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
  - b) must state the general nature of the business to be transacted at the meeting; and
  - c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 13.3. A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:

- a) the consideration of the annual financial report, Directors' report and the Auditor's report;
  - b) the election of directors; or
  - c) the appointment and fixing of the remuneration of the Auditor.
- 13.4. The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 12.2).
- 13.5. The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 54.1 entitled to receive notices from the Company.
- 13.6. The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

#### **14. Proceedings at general meetings –Member**

For the purposes of clauses 16, 17, 19 and 24, 'Member' includes a Member present in person or by proxy or Representative.

#### **15. Proceedings at general meetings- General conduct**

The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting will be determined by the chairperson, including the procedure for the conduct of the election of Directors.

#### **16. Quorum**

- 16.1. No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 16.2. A quorum of Members is five (5) Members.
- 16.3. If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
  - b) in any other case:

- i. it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors: and
  - ii. if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.
- 16.4. If the Company has only one Member, the Company may pass a resolution by the Member recording it and signing the record.

## **17. Chairperson of a general meeting**

- 17.1. The chairperson, or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every general meeting.
- 17.2. The Directors present may elect a chairperson of a general meeting if:
  - a) there is no chairperson or deputy chairperson; or
  - b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
  - c) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting.
- 17.3. If no election is made under clause 17.2, then:
  - a) the Members may elect one of the Directors present as chairperson; or
  - b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.
- 17.4. If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

## **18. Adjournment**

- 18.1. The chairperson of a general meeting at which a quorum is present:
  - a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
  - b) must adjourn the general meeting if the meeting directs him or her to do so.
- 18.2. An adjourned general meeting may take place at a different venue to the initial general meeting.
- 18.3. The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 18.4. Notice of an adjourned meeting must only be given in accordance with clause 13.1 if a general meeting has been adjourned for more than 21 days.

## **19. Decision on questions**

- 19.1. Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 19.2. A special resolution is carried if 75% of the votes cast on the resolution are in favour of the resolution.
- 19.3. A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 19.4. Unless a poll is demanded:
- a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
  - b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 19.5. The demand for a poll may be withdrawn.
- 19.6. A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

## **20. Votes of Members -Admission to general meetings**

- 20.1. The chairperson of a general meeting may refuse admission to a person, or require a person to leave and not return to, a meeting if the person:
- a) refuses to permit examination of any article in the person's possession; or
  - b) is in possession of any:
    - i. electronic or recording device;
    - ii. placard or banner; or
    - iii. other article,
- which the chairperson considers to be dangerous, offensive or liable to cause disruption; or
- c) causes any disruption to the meeting.

## **21. Votes of Members -Auditor's right to be heard**

- 21.1. The Auditor is entitled to:
- a) attend any general meeting of the Company;



- b) be heard at any general meeting of the Company on any part of the business of the meeting that concerns the Auditor In their capacity as auditor, even if:
  - i. the Auditor retires at the general meeting; or
  - ii. Members pass a resolution to remove the Auditor from office; and
- c) authorise a person in writing to attend and speak at any general meeting as the Auditor's representative.

## **22. Taking a poll**

- 22.1. A poll will be taken when and in the manner that the chairperson directs.
- 22.2. The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 22.3. The chairperson may determine any dispute about the admission or rejection of a vote.
- 22.4. The chairperson's determination, if made in good faith, will be final and conclusive.
- 22.5. A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 22.6. After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

## **23. Casting vote of chairperson**

The chairperson does not have a casting vote in addition to the chairperson's votes as a Member, proxy, or Representative.

## **24. Entitlement to vote**

- 24.1. A Member is not entitled to vote at a general meeting if the member's annual subscription is more than one month in arrears at the date of the meeting.
- 24.2. A Member entitled to vote has one vote.

## **25. Objections**

- 25.1. An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.
- 25.2. An objection must be referred to the chairperson of the general meeting, whose decision is final.
- 25.3. A vote which the chairperson does not disallow because of an objection is valid for all purposes.

## **26. Votes by proxy**

- 26.1. If a Member appoints a proxy or proxies, the proxy or proxies may not vote on a show of hands.
- 26.2. A proxy need not be a Member.
- 26.3. A proxy may demand or join in demanding a poll.
- 26.4. A proxy may vote on a poll.
- 26.5. A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy notes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

## **27. Document appointing proxy**

- 27.1. An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 27.2. For the purposes of clause 27.1, an appointment received at an electronic address will be taken to be signed by the Member if:
  - a) a personal identification code allocated by the Company to the Member has been included in the appointment; or
  - b) the appointment has been verified in another manner approved by the Directors.
- 27.3. A proxy's appointment is valid at an adjourned general meeting.
- 27.4. A proxy may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 27.5. Unless otherwise provided for in the proxy's appointment, the appointment of the proxy will be taken to confer authority:
  - a) to vote on:

- i. any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
    - ii. any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting;
    - iii. even though the appointment may specify the way the proxy is to vote on a particular resolution; and
  - b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 27.6. If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either act as proxy or complete the appointment by inserting the name or names of one or more directors or the Secretary.

## **28. Lodgement of proxy**

- 28.1. The written appointment of a proxy must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
  - b) the taking of a poll on which the appointee proposes to vote.
- 28.2. The Company receives an appointment of a proxy when it is received at:
- a) the Office;
  - b) a facsimile number at the Office; or
  - c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

## **29. Validity**

- 29.1. A vote cast in accordance with an appointment of proxy is valid even if before the vote was cast the appointor:

- a) died;
- b) became mentally incapacitated; or
- c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

## **Board of Directors**

### **30. Number of Directors**

30.1 The company must have at least 3 but no more than 7 Directors.

30.2 The Directors must collectively possess an appropriate understanding of the Indigenous dance sector, and must collectively possess an appropriate balance of expertise, including but not limited to:

- a) experience in financial, regulatory or technical matters; and
- b) having cultural or other interests relevant to the oversight of an Indigenous organisation that advocates for Indigenous dance.

### **31. Composition of Board**

31.1 The Board shall consist of:

- a) up to five (5) Directors elected by Members at a general meeting under clause 32.1; and
- b) up to an additional two (2) Directors appointed under clause 31.2.

31.2 The Board (by simple majority) may from time to time appoint up to two (2) additional Directors who are recognised experts in any field of expertise referred to in clause 30.2. Any such appointed Director shall not hold office for more than three (3) years, but is eligible for reappointment, subject to clause 34.1.

### **32. Election and appointment of Directors**

32.1 Apart from the directors appointed under clause 31.1(b), the members may elect a director by a resolution passed in a general meeting.

32.2 Each of the directors must be appointed by a separate resolution, unless:

- a) the members present have first passed a resolution that the appointments may be voted on together, and
- b) no votes were cast against that resolution.

32.3 A person is eligible for election as a director of the company if they:

- a) are a member of the company, or a representative of a member of the company (appointed under clause 9);
- b) are not ineligible to be a director under the Corporations Act or the ACNC Act; and
- c) if they, or another Member, leave a written notice at the Office at least 30 days before the general meeting, which:

- i. states the name of the person who is nominated as a candidate for the office of Director; and
  - ii. gives the nominated person's signed consent to act as a Director of the company.
- 32.4 A person who was previously elected as a Director at a general meeting and has been a director since that meeting is eligible for re-election and does not need to comply with clause 32.3(c).
- 32.5 A person who was appointed to the Board under clause 31.2 and who is otherwise eligible for election under clause 32.3 does not need to comply with clause 32.3(c).
- 32.6 The company must send all Members a written notice referring to all Director vacancies and each candidate for election at least seven (7) days before every general meeting at which an election of a Director will take place.
- 32.7 The directors may appoint a person as a director to fill a casual vacancy if that person:
  - a) is a member of the company, or a representative of a member of the company (appointed under clause 9);
  - b) gives the company their signed consent to act as a director of the company; and
  - c) is not ineligible to be a director under the Corporations Act or the ACNC Act.

### **33. Removal of Directors**

- 33.1 If the conduct or position of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Company, a majority of Directors at a meeting of the Directors specifically called for that purpose may suspend that Director.
- 33.2 Within 14 days of the suspension, the Directors must call a general meeting, at which the Members, by general resolution, may either:
  - a) confirm the suspension and remove the Director from office; or
  - b) annul the suspension and reinstate the Director.

### **34. Term of office**

- 34.1 A director is appointed for a term of three (3) years.

- 34.2 Other than a director appointed under clause 32.7, a director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- 34.3 At each annual general meeting any director appointed by the directors to fill a casual vacancy must retire.
- 34.4 A director may not hold office for more than three (3) consecutive terms (9 years).

### **35. Vacation of office**

- 35.1. The office of a Director immediately becomes vacant if the Director:
- a) ceases to be a Director by virtue of the Corporations Act;
  - b) is prohibited by the Corporations Act from holding office or continuing as a Director;
  - c) becomes bankrupt or makes any general arrangement or composition with his or her creditors;
  - d) is liable to have a person appointed. under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs , to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
  - e) resigns by notice in writing to the Company; or
  - f) is removed by resolution of the Company;
  - g) is absent from Directors' meetings for 3 consecutive months without leave of absence from the Directors;
  - h) holds any office of profit under the Company; or
  - i) is directly or Indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act.

### **36. Powers and duties of Directors**

- 36.1. The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- 36.2. Without limiting the generality of clause 36.1, the Directors may exercise all the powers of the Company to:
- a) borrow money;
  - b) charge any property or business of the Company;

- c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
- d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

### **37. Directors' meetings**

- 37.1. A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 37.2. A Directors' meeting must be called on at least [48 hours] written notice of a meeting to each Director.
- 37.3. It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary reasonably believes to be temporarily outside Australia.
- 37.4. Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 37.5. The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 37.6. Subject to clause 40, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 37.7. Clauses 37.4 to 37.6 apply to meetings of Directors' committees as if all committee members were Directors.
- 37.8. The Directors' may meet together, adjourn and regulate their meetings as they think fit.
- 37.9. A quorum is a majority of Directors for the time being.
- 37.10. Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting to deal with the matter.

### **38. Decision of questions**

- 38.1. Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 40, each Director has one vote.

The chairperson of a meeting does not have a casting vote in addition to his or her deliberative vote.

### **39. Payments to Directors**

- 39.1. No payment will be made to any Director of the Company other than payment:

- a) for out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service;
- c) for any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company; or
- d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 1998.

#### **40. Directors' Interests**

- 40.1. No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 40.2. No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 40.3. A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 40.4. Subject to clause 39, a Director or a body or entity in which a Director has a direct or indirect interest may:
  - a) enter into any agreement or arrangement with the Company;
  - b) hold any office or place of profit other than as auditor in the Company; and
  - c) act in a professional capacity other than as auditor for the Company,

and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.



- 40.5. A Director who has a material personal interest in a matter that is being considered at a Directors meeting must not:
- a) be present while the matter is being considered at the meeting;
  - b) vote on the matter,
- unless permitted by the Corporations Act to do so, in which case the Director may:
- c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that matter;
  - d) sign or countersign any document relating to that matter; and
  - e) vote in respect of, or in respect of any matter arising out of that matter.
- 40.6. Each Director must disclose his or her material personal interests.
- 40.7. Voting by a Director contrary to this clause 40, or failure by a Director to make disclosure under this clause 40, does not render void or voidable a contract or arrangement in which the Director has a material personal interest.
- 40.8. A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate .

#### **41. Remaining Directors**

- 41.1. The Directors may act even if there are vacancies on the board.
- 41.2. If the number of Directors is not sufficient to constitute a quorum at a Directors meeting, the Directors may act only to:
- a) appoint a Director; or
  - b) call a general meeting.

#### **42. Chairperson**

- 42.1. The Directors may elect a Director as chairperson of Directors meetings and may determine the period for which the chairperson will hold office.
- 42.2. If no chairperson is elected or If the chairperson is not present at any Directors meeting within ten minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.
- 42.3. The Directors may elect a Director as deputy chairperson to act as chairperson in the chairpersons absence.

#### **43. Delegation to a Committee**

- 43.1. The Directors may delegate any of their powers other than those which by law must be dealt with by the Directors as a board, to a committee or committees.
- 43.2. The Directors may at any time revoke any delegation of power to a committee.
- 43.3. At least one member of each committee must be a Director.
- 43.4. A committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 43.5. A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 43.6. Meetings of any committee will be governed by the provisions of this Constitution which deal with Directors meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each member was a Director.
- 43.7. Directors may appoint non-Director committee members.
- 43.8. Non-Director committee members may be paid sitting fees.

#### **44. Written resolutions**

- 44.1. The Directors may pass a resolution without a Directors meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.
- 44.2. For the purposes of clause 44.1 separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 44.3. Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 44.4. The minutes of Directors meetings must record that a meeting was held in accordance with this clause 44.
- 44.5. This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

#### **45. Validity of acts of Directors**

- 45.1. If it is discovered that:
  - a) there was a defect in the appointment of a person as a Director or member of a Directors committee ;or

- b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Directors committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

#### **46. Minutes and Registers**

- 46.1. The Directors must cause the minutes to be made of:
  - a) the names of the Directors present at all general meetings , Directors meeting and meetings of Directors committees;
  - b) all proceedings and resolutions of general meetings, Directors meetings and meetings of Directors committees;
  - c) all resolutions passed by Directors;
  - d) all appointments of officers;
  - e) all orders made by the Directors and Directors committees; and
  - f) all disclosures of interests made under clause 40.
- 46.2. Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 46.3. The Company must keep all registers required by this Constitution and the Corporations Act.

#### **47. Local management**

- 47.1. The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.
- 47.2. Without limiting clause 47.1 the Directors may:
  - a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
  - b) delegate to any person appointed under clause 47.2(a) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution, on any terms and subject to any conditions determined by the Directors.
- 47.3. The Directors may at any time revoke or vary any delegation under this clause 47.

#### **48. Appointment of attorneys and agents**

- 48.1. The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:

- a) for the purposes;
  - b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
  - c) for the period; and
  - d) subject to the conditions, determined by the Directors.
- 48.2. An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- a) any member of any local board established under this Constitution;
  - b) any company;
  - c) the members, directors, nominees or managers of any company or firm; or
  - d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 48.3. A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 48.4. The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.
- 48.5. An attorney or agent appointed under this clause 48 may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

#### **49. Secretary**

- 49.1. If required by the Corporations Act, there must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 49.2. The Secretary is entitled to attend and be heard on any matter at all Directors and general meetings.
- 49.3. The Directors may, subject to the terms of the Secretaries employment contract, suspend, remove or dismiss the Secretary.

#### **50. Common seal**

- 50.1. If the Company has a Seal:
- a) the Directors must provide for the safe custody of the Seal;
  - b) the Seal must not be used without the authority of the Directors or a Directors committee authorised to use the Seal;
  - c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document.

## **51. Duplicate Seal**

- 51.1. If the Company has a Seal, the Company may have one or more duplicate Seals of the Seal each of which:
- a) must be a facsimile of the Seal 'Duplicate Seal' on its face;
  - b) must not be used except with the authority of the Directors.

## **52. Inspection of records**

- 52.1. Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 52.2. Except as otherwise provided by the Corporations Act, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

## **53. Service of notices**

- 53.1. Notice may be given by the Company to any person who is entitled to notice under this Constitution:
- a) by serving it on the person; or
  - b) by sending it by post, facsimile transmission or electronic notification to the person at the persons address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 53.2. A notice sent by post is taken to be served:
- a) by properly addressing, prepaying and posting a letter containing the notice; and
  - b) on the day after the day on which it was posted.
- 53.3. A notice sent by facsimile transmission or electronic notification is taken to be served:
- a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
  - b) on the day after its despatch.
- 53.4. If a Member has no address recorded in the Register a notice will be taken to be served on that Member, 24 hours after it was posted on a notice board at the Office.
- 53.5. A Member whose registered address is not in Australia may specify in writing an address in Australia to be taken to be the Member's registered address for the purposes of this clause 53.

- 53.6. A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 53.7. Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 53.8. All notices sent by post outside Australia must be sent by prepaid airmail post.

#### **54. Persons entitled to notice**

- 54.1. Notice of every general meeting must be given to:
- a) every Member;
  - b) every Director; and
  - c) any Auditor.
- 54.2. No other person is entitled to receive notice of a general meeting.

#### **55. Audits and accounts**

- 55.1. The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.
- 55.2. The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.

### **Winding up**

#### **56. Member contribution to Company liabilities**

- 56.1. If the Company is wound up:
- a) each Member; and
  - b) each person who has ceased to be a Member in the preceding year,
- undertakes to contribute to the property of the Company for the:
- c) payment of debts and liabilities of the Company (in relation to clause 56.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
  - d) adjustment of the rights of the contributors amongst themselves,
- such amount as may be required, not exceeding \$10.00.

#### **57. Surplus assets not to be distributed to members**

If the company is wound up, any surplus assets must not be distributed to a member or a former member of the company, unless that member or former member is a charity described in clause 58.1.

## **58. Distribution of surplus assets**

58.1. Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets that remain after the company is wound up must be distributed to one or more charities:

- a) with charitable purposes similar to, or inclusive of, the purposes in clause 3, and
- b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company.

58.2. The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the company may apply to the Supreme Court to make this decision.

## **59. Indemnity and insurance**

59.1. To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against:

- a) any liability (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company, where the Company requested the officer to accept that appointment); or
- b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

59.2. The amount of any indemnity payable under clauses 59.1(a) or 59.1(b) will include an additional amount (GST Amount) equal to any GST payable by the officer being indemnified (Indemnified Officer) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

59.3. For the purposes of this clause 59 'officer' means a Director, Secretary or executive officer of the Company.

#### **60. Amending the Constitution**

60.1. Subject to clause 60.2, the Members may amend this constitution by passing a special resolution.

60.2. The Members must not pass a special resolution that amends this constitution if passing it causes the company to no longer be a charity.