

# CONSTITUTION OF

# Museum Shops Association of Australia and New Zealand Ltd

ABN: 64 093 893 282

A company limited by guarantee

# Contents

1.	Name of the Association	3
2.	Type of company	3
3.	Limited liability of members	3
4.	The guarantee	3
5.	Definitions	3
6.	Objects	3
7.	Powers	3
8.	Not-for-profit	3
9.	Amending the constitution	4
10.	Who can be a member	4
11.	Subscription Fees	4
12.	How to apply to become a member	4
13.	Membership Categories	4
14.	When a person becomes a member	5
15.	When a person stops being a member	6
16.	Disciplining members	6
17.	Board of Directors	7
18.	Term of office	8
19.	Powers of directors	9
20.	Alternative Directors	9
21.	Delegation of Directors' powers	9
22.	Payments to Directors	9
23.	Execution of documents	9
24.	Duties of directors	10
25.	Conflicts of interest	10
26.	Specific Duties of the President	10
27.	Specific Duties of the Vice President	10
28.	Director's meetings shall be called Board meetings	11
29.	Calling Board meetings	11
30.	Using technology to hold Board meetings	11
31.	Passing directors' resolutions	11
32.	Circular resolutions of directors	11
33.	Sub Committees of the Board	12
34.	Company Secretary	12
35.	Calling of General Meetings	12
36.	Annual general meeting	13
37.	Representatives of members	13
38.	Quorum at general meetings	14
39.	Chairperson for general meetings	14
40.	Auditor's right to attend meetings	14
41.	Adjournment of meetings	14
42.	How many votes a member has	15
43.	Challenge to member's right to vote	15
44.	How voting is carried out	15
45.	When and how a vote in writing must be held	15
46.	Appointment of proxy	15
47.	Voting by proxy	16
48.	Minutes and records	16
49.	Financial and related records	17
50.	By-laws	17
51.	What is notice	17
52.	Notice to the company	17
53.	Notice to members	18
54.	When notice is taken to be given	18
55.	Company's financial year	18
56.	Indemnity	18
57.	Insurance	19
58.	Directors' access to documents	19
59.	Surplus assets not to be distributed to members	19
60.	Distribution of surplus assets	19
61.	Definitions	20
62.	Reading this constitution with the Corporations Act	20
63.	Interpretation	20
64.	Transitional Arrangements	20

# Preamble

## 1. Name of the Association

The name of the Association is Museum Shops Association of Australia and New Zealand Ltd.

## 2. Type of company

The Association is a not-for-profit public company limited by guarantee.

## 3. Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

## 4. The guarantee

Each member must contribute an amount not more than \$100 (the guarantee) to the property of the association if the association is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- a. debts and liabilities of the association incurred before the member stopped being a member, or
- b. costs of winding up.

## 5. Definitions

In this constitution, words and phrases have the meaning set out in clause 61.

# Objects

## 6. Objects

6.1 The objects for which the Association has been established are:

- a. To maximise the creativity, success and reputation of Cultural Commerce Enterprises as core contributors to their institutions through advocacy and by providing assistance, information and professional development.
- b. To enhance communication between members through maintaining and disseminating current, high quality and relevant national and international information.

6.2 The Company pursues these Objects through a range of activities and services that may include but are not be limited to:

- a. To achieve excellence in Cultural Commerce management through professional development.
- b. To be the centre of Cultural Commerce information through research, data collection and analysis.
- c. To raise the awareness of the core role of cultural commerce within their Organisations and across the sector.
- d. To assist Cultural Commerce Enterprises to be more effective and financially viable.
- e. To provide a voice to members and to advocate for members interests.
- f. To be a strong and effective sustainable organisation providing leadership to its members, and
- g. To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the Company;

## 7. Powers

Subject to clause 8, the Association has the following powers, which may only be used to carry out its purposes set out in clause 6 :

- a. the powers of an individual, and
- b. all the powers of a company limited by guarantee under the Corporations Act.

## 8. Not-for-profit

8.1 The Association must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2

8.2 Clause 8.1 does not stop the Association from doing the following things, provided they are done in good faith:

- a. by way of reimbursement of expenses incurred by the member on behalf of the association
- b. for any other bona-fide purpose to allow the association to its objects.

## 9. Amending the constitution

The members may amend this constitution by passing a special resolution.

# Members

## 10. Who can be a member

- a. A person who supports the objects of the association is eligible to apply to be a member under clause 12.
- b. In this clause, 'person' means an individual or incorporated body .
- c. There are four categories of membership
  - i Organisation
  - ii Affiliate
  - iii Supplier
  - iv Individual

## 11. Subscription Fees

- 11.1 The Board may determine from time to time to charge Members fees.
- 11.2 The Board may determine different fees for amounts charged to Members as between different classes and categories, if any, of Members and as between Members within a class and/or category of membership. The Board may determine that no fee is payable by a Member.
- 11.3 Any amounts charged to Members are payable in such manner and at such times as are determined by the Board.
- 11.4 No part of any fee paid shall be refunded to a Member who ceases to be a Member in accordance with clause 15.

## 12. How to apply to become a member

- 12.1 A person (as defined in clause 10 b.) may apply to become a member of the Association by completing the prescribed application form, in a format as determined by the Board from time to time and submitting it to the Company Secretary.
- 12.2 The Board must consider an application for membership within a reasonable time after the secretary receives the application.
- 12.3 The Board may delegate the consideration and determination of any membership application.
- 12.4 If the Board approves an application, the secretary, or their nominee, must as soon as possible:
  - a. invoice the applicant the prescribed subscription fee.
  - b. upon receipt of payment, enter the new member on the register of members, and
  - c. write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 12.5 If the Board rejects an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected.
  - a. In no case shall the Board be required to give a reason for the rejection of any application for membership

## 13. Membership Categories

- 13.1 The following shall be eligible to become an **Organisation Member**,
  - a. Any public, non-profit or not-for-profit Organisation, as defined in Clause 61 (c), which maintains a commercial operation, either its own or leased.
  - b. Any public, non-profit or not-for-profit Organisation where a commercial operation is planned as part of the future development of the Organisation.
  - c. Organisations with multiple locations, each with a separate shop but centrally administered by the one Organisation.

Organisation Membership shall be vested in a staff member, in accordance with Clause 37, and directly connected to the commercial operation, present or proposed.

- d. An Organisation Member is entitled to:
  - i Attend all general meetings.
  - ii To receive all membership benefits and correspondences associated with the Association.
  - iii Vote.
  - iv be eligible for election to the Board or any sub-committee.

13.2 The following shall be eligible to become an **Affiliated Member**,

Any leased commercial operation trading within a public or non profit operation is eligible to apply for Affiliated Membership. Affiliated Membership shall be vested in a staff member directly connected to the commercial operation within the institution.

An Affiliated Member is entitled to:

- a. Attend all general meetings.
- b. To receive all membership benefits and correspondences associated with the Association.

An Affiliated Member shall not be,

- a. Entitled to vote.
- b. Eligible for election to the Board or any sub-committee, but may be eligible for appointment to the Board or sub committee under clause 17.4.

13.3 The following shall be eligible to become a **Supplier Member**,

Individuals or organisations who are vendors of cultural commercial enterprise relevant expertise and merchandise shall be eligible to apply for Supplier Membership.

A Supplier Member is entitled to:

- a. Attend all general meetings.
- b. To receive all membership benefits and correspondences associated with the Association.
- c. Entitled to participate, upon payment of a prescribed fee, in any trade event organised by the Association.

A Supplier Member shall not be,

- a. Entitled to vote.
- b. Eligible for election to the Board or sub-committee, but may be eligible for appointment to the Board or sub-committee under clause 17.4.

13.4 The following shall be eligible to become an **Individual member**,

Individuals with current or past association with cultural commercial enterprises shall be eligible to apply for Individual Membership.

An Individual Member is entitled to:

- a. Attend all general meetings.
- b. To receive all membership benefits and correspondences associated with the Association.

An Individual Member shall not be,

- a. Entitled to vote.
- b. Eligible for election to the Board or sub-committee, but may be eligible for appointment to the Board or sub-committee under clause 17.4.

## 14. When a person becomes a member

- a. An applicant will become a member when they have paid their annual subscription and are entered on the register of members.
- b. Each Member has the responsibility to inform the Association of any changes to its membership representative or status or its commercial operation as soon as it is practicable.
- c. A Member may be either an individual or an incorporated body.
- d. Membership is not transferable.

## **15. When a person stops being a member**

### 15.1 Failure to pay subscription

If the subscription of a Member remains unpaid for a period of thirty (30) days after it becomes due then the Member may, after notice of the default has been sent to it by the Secretary or Treasurer, be debarred by resolution of the Board from all privileges of membership and its name may be removed by the Board from the Register of Members provided that 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.

### 15.2 A person immediately stops being a member if they:

- a. are wound up or otherwise dissolved or deregistered (for an incorporated member)
- b. die
- c. resign, by writing to the secretary
- d. are expelled under clause 16, or
- e. have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

## **16. Disciplining members**

### 16.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the Association if the Board considers 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 Association.

### 16.2 At least 14 days before the Board meeting at which a resolution under clause 16.1 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 Board 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.

### 16.3 Before the Board passes any resolution under clause 16.1, the member must be given a chance to explain or defend themselves by:

- a. sending the Board a written explanation before that Board meeting, and/or
- b. speaking at the meeting.

### 16.4 After considering any explanation under clause 16.3, the Board 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.

### 16.5 The Board cannot fine a member.

### 16.6 The secretary must give written notice to the member of the decision under clause 16.4 as soon as possible.

### 16.7 Disciplinary procedures must be completed as soon as reasonably practical.

### 16.8 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.

# The Board

## 17. Board of Directors

17.1 The Board shall consist of at least three and no more than five elected directors. The board may resolve to appoint up to 2 other directors under clause 17.4. and a further two directors, one of whom shall be appointed in the event that the members do not elect at least one director from Australia and at least one from New Zealand and one reserved for continuity in the event that none of immediate past board is subsequently elected. In which case the board shall at its first meeting,

- a. Appoint, subject to their acceptance, a qualified representative from the country that is not represented for a term concurrent with the elected board.
- b. Appoint, subject to their acceptance, the immediate past president for a term concurrent with the elected board.

17.2 The Association may from time to time by ordinary resolution passed at a General Meeting increase or reduce the number of members of the Board.

17.3 Election of directors and filling of casual vacancies.

- a. Prior to the biennial election the directors must appoint an honorary Returning Officer who may or may not be a member of the Association, but must not be standing for election. This person will be responsible for the conduct of the election of directors and the subsequent election of office bearers.
- b. A person is eligible for election as a director of the Association if they are a representative of an Organisation member of the Association (appointed under clause 37) are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director at a general meeting and has been a director since that meeting), give the Association their signed consent to act as a director of the Association, and are not ineligible to be a director under the Corporations Act.
- c. The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
  - i is a member of the Association, or a representative of a member of the Association (appointed under clause 37)
  - ii gives the Association their signed consent to act as a director of the company, and is
  - iii not ineligible to be a director under the Corporations Act.

17.4 Appointed Director(s)

- a. The Board shall have the power in its absolute discretion, to appoint up to two (2) persons to the Board who bring particular skills and abilities to assist the board and help to further the objects of the Association.
- b. Appointed Directors may be, but are not required to be, Members of the Association.
- c. An appointed director may serve for no more than six concurrent years.
- d. The appointed Director, having served 6 years, may be re-considered for a further appointment after the expiration of 12 months.
- e. The term for an Appointed Director shall be such period as the Board determines at the time of appointment up to 24 months from the date of appointment.
- f. The commencement date of an appointed director is from the date of the board resolution of appointment.
- g. Appointed directors cannot be elected as President or Vice President.

17.5 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

## 17.6 Conduct of the election of directors

- a. Elections are held by ballot prior to the Annual General Meeting (AGM) every second year when the year is odd-numbered. In good time before the AGM the Board shall appoint an honorary Returning officer to receive the nomination forms and conduct the election, if required, and make the declaration of the election.
- b. The Returning Officer need not be a member of the Association but must not be a candidate.
- c. Nomination forms and conduct of the election shall be as determined by the Board.
- d. In the event that there are five or less nominations received by the Returning Officer then all candidates will be declared as elected.
- e. In the event that there are more than five candidates the Returning Officer will conduct the election by secret ballot according to procedures determined by the board and as set out in the by-laws.
- f. If there are insufficient candidates to fill the five positions then the board may appoint directors to fill a casual vacancy.
- g. The results of the election will be announced at the AGM.

## 17.7 Election of office bearers

Immediately following the conclusion of the AGM the Returning Officer shall convene a meeting of the newly elected Board for the purpose of the election of office bearers.

The board shall elect from their own the following positions:

- a. President
- b. Vice President
- c. Treasurer
- d. Secretary (unless the Secretary is appointed in accordance with clause 33)

Should a vacancy occur during the office bearer's term of office, the board shall appoint one of their own to fill the vacancy.

## 18. Term of office

18.1 Elected directors will hold office for two years. In the event that a director is appointed to fill a casual vacancy then their term expires at the AGM in an odd numbered year.

18.2 Other than a director appointed under clause 17.4, 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.

18.3 A Member may not be the President for more than five (5) consecutive years. Having served five years, a Member must step down from the presidency for no less than one year before presenting themselves for re-election.

18.4 A director who retires under clause 18.2 may nominate for re-election.

18.5 A director stops being a director if they:

- a. give written notice of resignation as a director to the Association
- b. die
- c. are removed as a director by a resolution of the members at a general meeting
- d. stop being a member of the Association
- e. are a representative of a member, and that member stops being a member
- f. are a representative of a member, and the member notifies the Association that the representative is no longer a representative
- g. are absent for 3 consecutive directors' meetings without approval from the directors, or
- h. become ineligible to be a director of the Association under the Corporations Act



## **Powers of directors**

### **19. Powers of directors**

- 19.1 The directors are responsible for managing and directing the activities of the company to achieve the purpose(s) set out in clause 6.
- 19.2 The directors may use all the powers of the company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- 19.3 The directors must decide on the responsible financial management of the company including:
- a. any suitable written delegations of power under clause 21, and
  - b. how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
  - c. determining whether or not to appoint an auditor, unless required to do so under the Act.
- 19.4 The directors cannot remove a director or auditor (if appointed). Directors and auditors may only be removed by a members' resolution at a general meeting.

### **20. Alternative Directors**

- 20.1 Alternative directors are not allowed.

### **21. Delegation of Directors' powers**

- 21.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the Association (such as a chief executive officer) or any other person, as they consider appropriate.
- 21.2 The delegation must be recorded in the company's minute book.

### **22. Payments to Directors**

- 22.1 The Association must not pay fees to a director for acting as a director.
- 22.2 The Association may:
- a. pay a director for work they do for the company, other than as a director, if the amount is no more than a reasonable fee for the work done, or
  - b. reimburse a director for expenses properly incurred by the director in connection with the affairs of the company.
- 22.3 Any payment made under clause 22.2 (a) must be approved by the directors.
- 22.4 The Association may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

### **23. Execution of documents**

- The Association may execute a document without using a common seal if the document is signed by:
- a. two directors of the company, or
  - b. a director and the secretary (where the secretary is not also a director).

# Duties of directors

## 24. Duties of directors

The directors must comply with their duties as directors under legislation and common law, which are:

- a. to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the association.
- b. to act in good faith in the best interests of the association and to further the objects) of the association set out in clause 6
- c. not to misuse their position as a director
- d. not to misuse information they gain in their role as a director
- e. to disclose any perceived or actual material conflicts of interest in the manner set out in clause 23
- f. to ensure that the financial affairs of the association are managed responsibly, and
- g. not to allow the association to operate while it is insolvent.

## 25. Conflicts of interest

25.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):

25.2 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 48.4:

- a. be present at the meeting while the matter is being discussed, or
- b. vote on the matter.

25.3 A director may still be present and vote if:

- a. their interest arises because they are a member of the Association, and the other directors have the same interest
- b. their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company (see clause 66)
- c. their interest relates to a payment by the company under clause 65 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act
- d. the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
- e. the directors who do not have a material personal interest in the matter pass a resolution that:
  - i identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company, and
  - ii says that those directors are satisfied that the interest should not stop the director from voting or being present.

## 26. Specific Duties of the President

The President shall be elected by the board and shall

- a. Preside over the Annual General Meeting at which he or she is present and able to do so.
- b. Ensure the preparation of the agenda for the Annual General Meeting.
- c. Present a report at the Annual General Meeting.
- d. Ensure the preparation of the agenda for Board meetings
- e. Chair all meetings of the board at which he or she is present and able to do so.
- f. Act as a spokesperson for the Association to the public, legislative bodies and other organisations.

## 27. Specific Duties of the Vice President

The Vice President shall be elected by the board and shall, in the absence of the President, assume all the responsibilities of the President until such time as the President formally notifies the Vice President that they have returned to duty. Absence from duty will be as defined by the board from time to time.

## Board meetings

### 28. Director's meetings shall be called Board meetings

The directors may decide how often, where and when they meet.

### 29. Calling Board meetings

The Secretary shall, on the requisition of the President or any two Directors summon a meeting of the Board by giving reasonable notice to all of the other directors.

29.1 The President shall be the chairperson for Board meetings

29.2 The directors at a Board meeting may choose a director to be the chairperson for that meeting if the elected President is:

- a. not present within 30 minutes after the starting time set for the meeting, or
- b. present but is unwilling or unable to act as chairperson of the meeting.

29.3 Quorum at Board meetings

- a. Unless the directors determine otherwise, the quorum for a Board meeting is a majority (more than 50%) of the directors in office at the time.
- b. A quorum must be present for the whole Board meeting.

### 30. Using technology to hold Board meetings

30.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.

30.2 The directors' agreement may be a standing (ongoing) one.

30.3 A director may only withdraw their consent within a reasonable period before the meeting.

### 31. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

### 32. Circular resolutions of directors

32.1 The directors may pass a circular resolution without a directors' meeting being held.

32.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 31.3 or clause 31.4.

32.3 Each director may sign:

- a. a single document setting out the resolution and containing a statement that they agree to the resolution, or
- b. separate copies of that document, as long as the wording of the resolution is the same in each copy.

32.4 The company may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

32.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 31.3 or clause 31.4

### **33. Sub Committees of the Board**

33.1 The Board may in its discretion establish one or more Sub-committee(s) to further the objects of the Association as defined herein in accordance with the following:

- a. 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 Association.
- b. At least one Board member shall sit on each Sub-committee.
- c. 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.

33.2 Notwithstanding paragraph 32.1(c), the Board may delegate any of its powers to one or more Sub-committees; any Sub-committee so formed shall in the exercise of the powers so delegated conform to any regulations that maybe imposed on it by the Board.

33.3 A Sub-committee may elect a chair of its meetings; if no such chair is elected, or if at any meeting the chairman is not present within ten (10) minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chair of the meeting.

33.4 A Sub-committee may meet and adjourn as it thinks proper.

### **34. Company Secretary**

34.1 Appointment and role of secretary

- a. The company must have at least one secretary, who may also be a director.
- b. A secretary must be appointed by the directors (after giving the company their signed consent to act as secretary of the company) and may be removed by the directors.

34.2 The directors must decide the terms and conditions under which the secretary is appointed.

34.3 Remuneration of the Secretary

If the Company Secretary is not a member of the Board then the Board may determine their remuneration

34.4 The role of the secretary includes:

- a. maintaining a register of the company's members, and
- b. maintaining the minutes and other records of general meetings (including notices of meetings), Board meetings and circular resolutions.

## **General meetings of members**

### **35. Calling of General Meetings**

The Board may call a General Meeting at any time.

35.1 Notice of a general meeting must be in accordance with the Act and be given to:

- a. each member entitled to vote at the meeting
- b. each director, and
- c. the auditor (if any).

35.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.

35.3 Members may request or call a General Meeting in accordance with the Act.

35.4 Notice of a general meeting must include:

- a. the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
- b. the general nature of the meeting's business
- c. if applicable, that a special resolution is to be proposed and the words of the proposed resolution
- d. a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
  - i the proxy does not need to be a member of the company
  - ii the proxy form must be delivered to the company at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
  - iii the proxy form must be delivered to the company at least 48 hours before the meeting.

35.5 If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting

## **36. Annual general meeting**

36.1 A general meeting, called the annual general meeting, must be held at least once in every calendar year.

36.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:

- a. a review of the company's activities
- b. a review of the company's finances
- c. any auditor's report
- d. the election of directors, and
- e. the appointment and payment of auditors, if any.

36.3 Before or at the annual general meeting, the directors must give information to the members on the company's activities and finances during the period since the last annual general meeting.

36.4 The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the company.

## **37. Representatives of members**

37.1 An incorporated member may appoint as a representative:

- a. one individual to represent the member at meetings and to sign circular resolutions, and
- b. the same individual or another individual for the purpose of being appointed or elected as a director.
- c. The appointment of a representative by a member must:
  - i be in writing
  - ii include the name of the representative
  - iii be signed on behalf of the member, and
  - iv be given to the company or, for representation at a meeting, be given to the chairperson before the meeting starts.

37.2 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.

37.3 The appointment may be standing (ongoing).

### **38. Quorum at general meetings**

38.1 For a general meeting to be held, at least 10 members, who are not board members, must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).

38.2 No business may be conducted at a general meeting if a quorum is not present.

38.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:

- a. if the date is not specified – the same day in the next week
- b. if the time is not specified – the same time, and
- c. if the place is not specified – the same place.

38.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

### **39. Chairperson for general meetings**

39.1 The President is entitled to chair general meetings.

39.2 The members present and entitled to vote at a general meeting may choose a director or member to be the chairperson for that meeting if:

- a. there is no President, or
- b. the President is not present within 30 minutes after the starting time set for the meeting, or
- c. the President is present but is willing or unable to act as chairperson of the meeting.

39.3 Role of the Chairperson

- a. The chairperson is responsible for the conduct of the general meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- b. The chairperson does not have a casting vote.

### **40. Auditor's right to attend meetings**

40.1 The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

40.2 The company must give the auditor (if any) any communications relating to the general meeting that a member of the company is entitled to receive.

### **41. Adjournment of meetings**

41.1 If a quorum is present, a general meeting must be adjourned if a majority of members present direct the chairperson to adjourn it.

41.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## Voting at general meetings

### 42. How many votes a member has

Each member has one vote.

### 43. Challenge to member's right to vote

43.1 A member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.

43.2 If a challenge is made under clause 42.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### 44. How voting is carried out

44.1 Voting must be conducted and decided by:

- a. a show of hands
- b. a vote in writing, or
- c. another method chosen by the chairperson that is fair and reasonable in the circumstances.

44.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

44.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.

44.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### 45. When and how a vote in writing must be held

45.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:

- a. at least five members present
- b. members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
- c. the chairperson.

45.2 A vote in writing must be taken when and how the chairperson directs, unless clause 44.3 applies.

45.3 A vote in writing must be held immediately if it is demanded under clause 44.1:

- a. for the election of a chairperson under clause 38.2, or
- b. to decide whether to adjourn the meeting.
- c. A demand for a vote in writing may be withdrawn.

### 46. Appointment of proxy

46.1 A member may appoint a proxy to attend and vote at a general meeting on their behalf.

46.2 A proxy does not need to be a member.

46.3 A proxy appointed to attend and vote for a member has the same rights as the member to:

- a. speak at the meeting
- b. vote in a vote in writing (but only to the extent allowed by the appointment), and
- c. join in to demand a vote in writing under clause 44.1.

46.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:

- a. the member's name and address
- b. the company's name
- c. the proxy's name or the name of the office held by the proxy, and
- d. the meeting(s) at which the appointment may be used.

46.5 A proxy appointment may be standing (ongoing).

46.6 Proxy forms must be received by the company at the address stated in the notice under clause 21.5(d) or at the company's registered address at least 48 hours before a meeting.

46.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.

46.8 Unless the company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:

- a. dies
- b. is mentally incapacitated
- c. revokes the proxy's appointment, or
- d. revokes the authority of a representative or agent who appointed the proxy.

46.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

## **47. Voting by proxy**

47.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).

47.2 When a vote in writing is held, a proxy:

- a. does not need to vote, unless the proxy appointment specifies the way they must vote
- b. if the way they must vote is specified on the proxy form, must vote that way, and
- c. if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

## **Minutes and records**

### **48. Minutes and records**

48.1 The company must, within one month, make and keep the following records:

- a. minutes of proceedings and resolutions of general meetings
- b. minutes of circular resolutions of members
- c. a copy of a notice of each general meeting, and

48.2 The company must, within one month, make and keep the following records:

- a. minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
- b. minutes of circular resolutions of directors.

48.3 To allow members to inspect the company's records:

- a. the company must give a member access to the records set out in clause 47.1, and
- b. the directors may authorise a member to inspect other records of the company, including records referred to in clause 47.2 and clause 48.1.



48.4 The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by:

- a. the chairperson of the meeting, or
- b. the chairperson of the next meeting.

48.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

## **49. Financial and related records**

49.1 The company must make and keep written financial records that:

- a. correctly record and explain its transactions and financial position and performance, and
- b. enable true and fair financial statements to be prepared and to be audited (if required).

49.2 The company must also keep written records that correctly record its operations.

49.3 The company must retain its records for at least 7 years.

49.4 The directors must take reasonable steps to ensure that the company's records are kept safe.

## **By-laws**

### **50. By-laws**

50.1 The directors may by resolution make, amend or revoke by-laws to give effect to this constitution or to govern the procedures and activities of the Association.

50.2 Members and directors must comply with by-laws as if they were part of this constitution, provided that if a by-law directly impinges on a member's right as a member then the by-law does not come into effect until such time as the members give approval at a General Meeting.

## **Notice**

### **51. What is notice**

51.1 Anything written to or from the company under any clause in this constitution is written notice and is subject to clauses 51 to 53, unless specified otherwise.

51.2 Clauses 51 to 53 do not apply to a notice of proxy under clause 45.6.

### **52. Notice to the company**

Written notice or any communication under this constitution may be given to the company, the directors or the secretary by:

- a. delivering it to the company's registered office.
- b. posting it to the company's registered office or to another address chosen by the company for notice to be provided.
- c. sending it to an email address or other electronic address notified by the company to the members as the company's email address or other electronic address.

## 53. Notice to members

53.1 Written notice or any communication under this constitution may be given to a member:

- a. in person
- b. by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
- c. sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any), or
- d. if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

53.2 If the company does not have an address for the member, the company is not required to give notice in person.

## 54. When notice is taken to be given

A notice:

- a. delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered
- b. sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- c. sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
- d. given under clause 52.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

## Financial year

### 55. Company's financial year

The company's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

## Indemnity, insurance and access

### 56. Indemnity

56.1 The company indemnifies each officer of the company out of the assets of the company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the company.

56.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.

56.3 In this clause, 'to the relevant extent' means:

- a. to the extent that the company is not precluded by law (including the Corporations Act) from doing so, and
- b. for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

56.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the company.

## **57. Insurance**

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

## **58. Directors' access to documents**

58.1 A director has a right of access to the financial records of the company at all reasonable times.

58.2 If the directors agree, the company must give a director or former director access to:

- a. certain documents, including documents provided for or available to the directors, and
- b. any other documents referred to in those documents.

## **Winding up**

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

If the Association is wound up, any surplus assets must not be distributed to a member or a former member of the Association.

### **60. Distribution of surplus assets**

60.1 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 a body that has:

- a. similar to, or inclusive of, the purpose(s) in clause 6, and
- b. a constitution which also prohibits the distribution of any surplus assets to its members to at least the same extent as the Association.

60.2 The body to which the surplus assets are to be given 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.

# Definitions and interpretation

## 61. Definitions

In this constitution:

- a. Company means the company referred to in clause 1
- b. Corporations Act means the Corporations Act 2001 (Cth)
- c. Organisation means and commercial operation associated with a cultural enterprise which includes but is not limited to museums, zoos, art galleries, libraries and visitor attractions.
- d. Elected chairperson means a person elected by the directors to be the company's chairperson under clause 17.7
- e. General meeting means a meeting of members and includes the annual general meeting, under clause 34
- f. Initial member means a person who is named in the application for registration of the company, with their consent, as a proposed member of the company
- g. Member present means, in connection with a general meeting, a member present in person, by representative or by proxy at the venue or venues for the meeting
- h. Special resolution means a resolution:
  - i of which notice has been given under clause 34.4, and
  - ii that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution, and
- c. surplus assets means any assets of the company that remain after paying all debts and other liabilities of the company, including the costs of winding up.

## 62. Reading this constitution with the Corporations Act

62.1 The replaceable rules set out in the Corporations Act do not apply to the Association.

62.2 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

## 63. Interpretation

In this constitution:

- a. the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- b. reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).
- c. As it relates to the Association, the use of the word 'Company' means the same.

# Transitional Arrangements

## 64. Upon the adoption of this constitution:

64.1 the existing directors of the association will continue until the next election.

64.2 Members previously defined as Institutional members will become Organisational members and be in accordance with clause 13.1 of this constitution.

64.3 Members previously defined as Associate members will become Supplier members and be in accordance with clause 13.3 of this constitution

64.4 Members previously defined as Affiliate member will continue as Affiliate members in accordance with clause 13.2 of this constitution.