

Explanatory Statement

This Explanatory Statement has been prepared for the Members of Creative Broadcasters Ltd, in connection with the business to be conducted at the Annual General Meeting of the Company on Wednesday, November 25 2020.

This Explanatory Statement should be read with the accompanying Notice of Annual General Meeting.

Changes to Creative Broadcasters Ltd Constitution

Members with voting rights are advised of the intention to propose ONE SPECIAL RESOLUTION containing constitutional changes to update several Sections of the document to reflect contemporary governance practices relating to technologies, language, DGR compliance, membership application processes, the role of the chairperson and maximum continuous terms of directors. The proposed changes, as drafted by McCullough Robertson lawyers who provided their services pro bono, are outlined in this document.

Special Resolution

THAT, with the close of this Annual General Meeting, it is proposed to amend the Creative Broadcasters Ltd constitution to make changes that permit the adoption of contemporary governance practices around technologies, language, DGR compliance, membership application processes, role of the chair and maximum continuous terms of directors.

Impetus & Effect

In early 2020, a sub-committee of the 4ZZZ Board of Directors undertook a review of the Creative Broadcasters Ltd Constitution to determine it's compliance with governance requirements as determined by the Corporations Act and best practice principles laid out by 4ZZZ's peak bodies, the [Australian Charities and Not-for-profits Commission](#) (ACNC) and the [Community Broadcasting Association of Australia](#) (CBA). The review recommended that the Board of Directors develop several amendments to ensure our governing document reflects the values of 4ZZZ and contain robust processes that align with model constitutions for the not-for-profit sector.

The Board accepted these recommendations to the effect that they will strengthen our ability to deliver our mission statement, embody our values and maintain strong governance practices long into the future. The proposed changes were circulated to all members for consultation & feedback in early October 2020, resulting in 7 email inquiries from members regarding the changes. All inquiries were responded to in writing.



Breakdown of Proposed Changes

Throughout the Creative Broadcasters Ltd Constitution

- References to 'he' or 'she' are removed and replaced by gender neutral expressions 'they', 'their', 'them', and 'themselves', according to the context of the Constitution.
- All references to facsimiles as a communication for making or receiving legal service are removed.

Section 2.1 of the Creative Broadcasters Ltd Constitution

- A definition of '**Defaulting Member**' is to be inserted in the definitions section
- '**Objects**' is changed to '**Object**' throughout the constitution.
- The meaning of **4ZZZ** is altered to include '**digital radio**'.

Section 3 of the Creative Broadcasters Ltd Constitution

- **Section 3(a)** has been amended to reflect one Object and the 'Principal Purpose' being the promotion of radio in Australia. All of the previous goals expressed as 'Objects' in the previous constitution are **maintained** in the amendments as *ways* that the company may pursue that object and principal purpose.
- Throughout Section 3 grammatical changes have been made to remove the passive versions of how the Company will take actions in support of the object and principal purpose (examples:- 'undertake', is now 'undertaking', enable is now 'enabling', 'furnish and equip' is now 'furnishing and equipping').
- **Section 3(b)(iii)(A) and 3(b)(iv)(A)** will both include reference to enabling and facilitating broadcasting programs dealing with '**current affairs**' as an explicit way to serve marginalised communities and music.
- **Section 3(b)(iv)(A)** has removed reference to the 'handicapped' and replaced with '**people with disabilities**'
- **Section 3(b)(vi)(B)** will be expanded to prohibit the broadcasting of material which is **ableist, transphobic**, with an additional 'catch-all protective provision' added to prohibit the broadcasting of any other material '**harmful to the health and wellbeing of its listeners and/or marginalised groups**'.

Section 4(a) of the Creative Broadcasters Ltd Constitution

- **Section 4(a)** amendment inserts a reference to Section 23 of the Constitution as per Register of Cultural Organisation (ROCO) requirements for payments made by organisations winding up.



Section 6 of the Creative Broadcasters Ltd Constitution

- **Section 6.1** reinstates a process for the approval or rejection of new members as informed by ACNC best practice recommendations.
- **Section 6.2** contains amendments to allow the Board to waive or reduce any annual fee payable by any member or class of members. This would allow the Board to create a new category of membership for First Nations people and waive or reduce the annual fee applicable.
- **Section 6.5** is amended to clearly capture the resulting cessation of membership due to a failure to pay the annual fee or due to an expulsion arising from misconduct.
- **Section 6.7** contains amendments to the existing triggers for a 'defaulting member' to be expelled, suspended or warned for misconduct relating to compliance with the Constitution or endangering the integrity of the Company.
- **Section 6.8** contains amendments about a Defaulting Member's right to reply and address the substance of any complaint made against them.
- **Section 6.9** is removed and replaced by Section 6.8 as above (Section 6.9 was titled Right of Appeal of Expelled Member).

Section 8.12(d) of the Creative Broadcasters Ltd Constitution

- **Section 8.12(d)** is added in - simply declaring that the Chair of the Board is responsible for the conduct of a general meeting of members and that members must be given a reasonable opportunity to make comments and ask questions. This adheres to the ACNC best practice recommendations.

Section 9.4 of the Creative Broadcasters Ltd Constitution

- **Section 9.4** is amended so that the chair has no casting vote, removing the capacity of the Chair to make a deciding vote in the event of a tie amongst voting members. This amendment is informed by the ACNC best practice recommendations.

Section 11.1 of the Creative Broadcasters Ltd Constitution

- **Section 11.1** clarifies a latent inconsistency concerning the minimum number of Directors.

Section 11.2 of the Creative Broadcasters Ltd Constitution

- **Section 11.2** clarifies that the power to appoint or remove a Director is subject to maintaining the minimum and maximum number of Directors.

Section 11.3(d) of the Creative Broadcasters Ltd Constitution

- **Section 11.3(d)** amends the maximum continuous term for a director to hold office to 10 years, rather than the existing 6 years - it is based on 10 continuous years and is not a lifetime maximum.



Section 13.5(b) of the Creative Broadcasters Ltd Constitution

- **Section 13.5(b)** prevents the Chair casting a deciding vote at a Directors Meeting. It is introduced in accordance with the ACNC best practice recommendations.

Schedule 1 of the Creative Broadcasters Ltd Constitution

- **Schedule 1, Section 4** is amended to align with the single Object as outlined in Section 3 above.
- **Schedule 1, Section 12** is amended simply to expand “ROCO” as meaning ‘the Register of Cultural Organisations’.

Attachments

The proposed changes to the Creative Broadcasters Ltd Constitution are marked up in full in the attached version of the Constitution below. You can read the deletions and insertions verbatim as they will appear should members vote in favour of the Special Resolution.





**Constitution of
Creative Broadcasters Limited
ACN 009 950 958
a company limited by guarantee**

5/11/2015

Table of contents

1.	Nature of the Company.....	1
2.	Definitions and interpretation	1
2.1	Definitions	1
2.2	Interpretation	2
2.3	Replaceable rules	3
2.4	Compliance with the Corporations Act	3
2.5	Transitional	3
3.	Object and powers of the Company	4
4.	Assets and income of the Company	6
5.	Membership.....	6
5.1	Number of Members	6
5.2	Membership requirements and undertaking	6
5.3	Liability of Members and undertaking	7
5.4	Eligibility and membership rights	7
5.5	Representatives	7
6.	Application for and cessation of membership	8
6.1	Application for membership	8
6.2	Membership fees	9
6.3	Failure to pay membership fees	9
6.4	No transfer of membership	9
6.5	Cessation of membership	9
6.6	Resignation of Membership	10
6.7	Suspending or expelling Members	10
6.8	Right of Reply of expelled or suspended member	11
7.	Register of Members.....	12
8.	General meetings	13
8.1	Annual general meetings	13
8.2	Business at annual general meeting	13
8.3	Power of Directors to convene general meeting	13
8.4	Power of Members to convene a general meeting	13
8.5	Members' resolutions at a general meeting	14
8.6	Notice of general meetings	14
8.7	Content of notice of general meetings	15
8.8	Failure to give notice	15
8.9	Use of technology	15
8.10	Quorum	15
8.11	If a quorum not Present	16
8.12	Chair of general meeting	16
8.13	Right of officers and advisers to attend general meeting	16
8.14	Adjournments	16
8.15	Written resolutions of Members	17
9.	Voting at general meetings	17
9.1	Voting rights	17

9.2	Members' resolutions	17
9.3	Voting by poll	17
9.4	Chair has no casting vote	18
9.5	Objection to qualification to vote	18
9.6	Votes counted in error	18
10.	Proxies	19
10.1	Appointment of proxies	19
10.2	Rights of proxies	19
10.3	Form of proxy	19
10.4	Where proxy is incomplete	19
10.5	Lodgement of proxy	20
10.6	Validity of proxy vote	21
11.	Board of Directors.....	21
11.1	Number of Directors	21
11.2	Appointment and removal of Directors	21
11.3	Term of appointment as Director	21
11.4	Nomination of Directors	22
11.5	Director qualifications	22
11.6	Vacation of office of Director	22
11.7	Remuneration and payments to Directors	23
12.	Powers and duties of Directors	23
12.1	General management power	23
12.2	Appointment of attorneys and representatives	23
12.3	Committees	23
12.4	Negotiable instruments and electronic payments	24
12.5	By-laws	24
12.6	Acts of Directors valid despite defective appointment	24
12.7	Interested Directors	24
13.	Proceedings of Directors.....	25
13.1	Calling and holding Directors' meetings	25
13.2	Meetings by telecommunications	25
13.3	Quorum	26
13.4	Chair	26
13.5	Directors' resolutions	26
13.6	Acts of Directors valid despite defective appointment	27
13.7	Minutes	27
13.8	Written resolutions of Directors	27
14.	Alternate Directors and attendance by proxy.....	28
15.	Secretary.....	29
16.	Seal.....	29
16.1	Safe custody	29
16.2	Authority to use	29
16.3	Seal register	29
16.4	Additional seal	29
17.	Execution of documents.....	30

17.1	Execution generally	30
17.2	Execution using the seal	30
17.3	Execution by authorised persons	30
18.	Notices	30
18.1	How notice to be given	30
18.2	When notice is given	31
18.3	No notice of no valid address	31
19.	Audit and accounts	31
19.1	Company must keep accounts	31
19.2	Audit	31
19.3	Financial reporting	31
20.	Inspection of records	32
21.	Indemnity and insurance	32
21.1	Definition	32
21.2	Company may indemnify Officers	32
21.3	Documentary indemnity and insurance policy	32
22.	Affiliation and membership of other similar organisations	32
23.	Winding up	32
24.	Variation or amendment of Constitution	33
	Schedule 1 – Public Fund	34

Creative Broadcasters Limited ACN 009 950 958

A Company limited by guarantee

1. Nature of the Company

- (a) This Company is a public company limited by guarantee.
- (b) The name of the Company is Creative Broadcasters Limited.
- (c) The Company does not have the power to issue shares.

2. Definitions and interpretation

2.1 Definitions

The following definitions apply in this Constitution unless the context requires otherwise:

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

Alternate Director means a person appointed as an alternate Director under clause 14;

Annual fee means the annual fee determined under clause 6.2;

Appointing Director has the meaning given in clause 14(a);

Board means the Board of Directors of the Company from time to time;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Brisbane;

Chair means the Chair of Directors appointed under clause 13.4;

Company means Creative Broadcasters Limited ACN 009 950 958;

Constitution means this constitution as amended, supplemented or replaced from time to time;

Corporations Act means the *Corporations Act 2001* (Cth) and any regulations made under that statute;

Defaulting Member has the meaning given in clause 6.7(a);

Director means a person appointed or elected to the office of director of the Company and, where appropriate, includes an Alternate Director;

Financial Year means the 12 month period ending on 30 June;

Insolvency Event means, in relation to a person, any one or more of the following events or circumstances:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;

- (b) having a controller (as defined in the Corporations Act), receiver, receiver and manager, administrator, liquidator (whether provisional or otherwise) or analogous person appointed to it or any of its property;
- (c) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the Corporations Act or any other law;
- (d) seeking protection from its creditors under any law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; or
- (e) any analogous event or circumstance to those described in paragraphs (a)–[bookmark0](#) to (d)– [bookmark1](#) under any law;

Member means a member of the Company entered in the Register;

Object~~s~~ means the object~~s~~ of the Company as set out in clause 3;

Office means the registered office of the Company;

Present means, in connection with a meeting, a Member being present in person or by proxy, attorney or Representative, and includes being present at a different venue from the venue at which other Members are participating in the same meeting, providing the pre- requisites for a valid meeting at different venues are observed;

Register means the register of Members of the Company;

Representative means a natural person nominated by an organisation in accordance with clause 5.5

Secretary means a person appointed to the office of secretary of the Company from time to time;

Small Company Limited By Guarantee has the meaning given to that term in section 45B of the Corporations Act; and

Special Resolution has the meaning given to that term in section 9 of the Corporations Act.

4ZZZ means the FM [and digital](#) radio station operated by the Company.

2.2 Interpretation

In this Constitution, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the headings are used for convenience only and do not affect the interpretation of this Constitution;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;

- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (g) the word "person" includes a natural person, partnership, body corporate, association, governmental or local authority, agency and any other body or entity whether incorporated or not;
- (h) the word "month" means calendar month and the word "year" means 12 months;
- (i) the words "in writing" include any communication sent by letter, ~~facsimile transmission or~~ email or any other form of communication capable of being read by the recipient;
- (j) a reference to a thing includes a part of that thing;
- (k) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (l) wherever "include", "for example" or any form of those words or similar expressions is used, it must be construed as if it were followed by "(without being limited to)";
- (m) money amounts are stated in Australian currency unless otherwise specified;
- (n) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body that performs most closely the functions of the defunct body; and
- (o) any expression in a provision of this Constitution that relates to a particular provision of the Corporations Act has the same meaning as in that provision of the Corporations Act.

2.3 Replaceable rules

The replaceable rules contained in the Corporations Act are displaced under section 135(2) of the Corporations Act and do not apply to the Company.

2.4 Compliance with the Corporations Act

This Constitution is subject to the Corporations Act and where there is any inconsistency between a clause of this Constitution and the Corporations Act which is not permissible under the Corporations Act, the Corporations Act prevails to the extent of the inconsistency.

2.5 Transitional

Everything done under this Constitution of the Company continues to have the same operation and effect after the adoption of any successor Constitution as if properly done under that Constitution.

3. Objects and powers of the Company

(a) The ~~Objects and principal purpose~~ for which the Company is established ~~are-is~~ to promote radio in Australia.

(a)(b) The Company may pursue its Object and principal purpose in any lawful manner it decides, including by:

- (i) ~~To applying~~ for and ~~to holding~~ a community broadcasting licence and any other telecommunications licences~~;~~
- (ii) ~~To establish~~ing and ~~to operate~~operating a community broadcasting station and media outlet and ~~to erect~~ing, ~~furnish~~ing and ~~equip~~ing audio studios and production facilities of broadcast standard for use by the community~~;~~
- (iii) ~~To operat~~ing the Company as a not for profit community institution and ~~to undertake~~undertaking all measures necessary to provide a radio broadcasting service to encourage, ~~enabl~~ing and ~~facilitat~~ing communication within Brisbane and its surrounds by operating and developing community media activities serving marginalised communities and music, and in particular:
 - (A) ~~to enabl~~ing and ~~facilitat~~ing communication within the community by broadcasting programs dealing with local issues, current affairs, events, culture and activities~~;~~
 - (B) ~~to promot~~ing the work of Australian musicians and performers and regularly ~~play~~ing throughout the day, new material and music of upcoming Australian bands and performers or those not recorded or distributed by major record companies and to this end ~~to provide~~providing broadcasting and recording facilities ~~to encourage~~to encourage Australian music talent~~;~~
 - (C) ~~to exceed~~ing at all times the minimum Australian content provisions outlined in the Community Broadcasting Code of Practice~~;~~ and
 - (D) ~~to provid~~ing the opportunity for community groups and related associations, organisations and individuals to be involved in the production and presentation of original programs~~;~~
- (iv) ~~In accordance~~according with the previous point, and as the Company determines, ~~to provid~~ing programming of a type ~~not in~~adequately covered by existing broadcasters, ~~and in particular~~particularly:
 - (A) ~~to encourag~~ing and ~~develop~~ing uses of radio for community and public affairs, education, current affairs, culture, information, entertainment and recreation by, for and directed to the local community including (but not limited to) the handicapped people with disabilities, parents, teachers, and children~~;~~
 - (B) ~~to becom~~ing a “town crier” of cultural and community information by compiling community resource data and information with respect to local activities, events and developments affecting the community~~;~~ and

- (C) ~~to~~promotinge and encouraginge innovative and experimental uses of radio, ~~to~~commissioning musical, dramatic and literary works for use relating to the objects of the Company~~;~~
- (v) ~~To~~teaching, training, instructing, preparinge and assisting members to produce material for transmission and ~~to~~providinge facilities for members ~~to~~learning and practicinge the technical and aesthetic aspects of radio broadcasting and producingtion as well as other related media-producingtion activities~~;~~
- (vi) ~~To~~fostering the development and ideals of community broadcasting in such ways as the Company may determine, and ~~to~~being a member of the Community Broadcasting Association of Australia and to subscribe to the Community Broadcasting Code of Practice, and in particular:
 - (A) ~~to~~seeking all possible participation of members in all aspects of the Company including management, operations, programming and program production~~;~~ and
 - (B) ~~to~~actively discouraginge the broadcasting of material which may be harmful to the health and wellbeing of its listeners and/or marginalised groups, including material which is sexist, racist, ableist, transphobic or homophobic~~;~~
- (vii) ~~To~~conducting, either solely or jointly with others, entertainments, promotions, concerts, cultural activities, meetings, conferences, community information resource centres, lectures, seminars, courses, and other activities on matters of interest relating to the objects of the Company (and ~~to~~broadcasting the same as are relevant), and ~~to~~publishing either solely or jointly with others, programing and other material relating to the objects of the Company~~;~~
- (viii) ~~To~~carrying out research into radio and other media including all technical, economic, social and marketing aspects specifically ~~related~~relating to the use of these means towards the objects of the Company~~;~~
- (ix) ~~To~~producinge either solely or jointly with others publications and other products for share, sale, loan, or hire including recorded programs suitable for dissemination through access arrangements with other community broadcasters and programmers and other outlets~~;~~
- (x) ~~To~~informing members and other interested individuals about the aims and operations of the Company, about community broadcasting, Australian and alternative music, and about the aims and activities of participating groups and individuals, through station programming and the establishment of a newsletter and programming guide~~;~~ and
- (xi) ~~To~~supporting and to co-operatinge with any kindred body.

~~(b)~~(c) The Company has all the powers of a company set out in the Corporations Act. The Company may use its powers to do:

- (i) anything which it considers will advance or achieve the Objects; and

- (ii) all other things that are incidental or conducive to carrying out the Objects.

4. Assets and income of the Company

- (a) Subject to clause 4(b), all assets, income and profits of the Company must be applied solely towards the promotion of the Objects, and other than in accordance with clause 23, no portion of the Company's assets, income or profits may be:
 - (i) paid or distributed directly or indirectly by way of dividend, bonus or otherwise to any Member; or
 - (ii) paid as fees or otherwise to any Director except in accordance with clause 4(b)
- (b) Nothing in this Constitution prevents the Company from making a payment approved by the Board:
 - (i) for out-of-pocket expenses properly incurred by a Director in attending meetings of Directors, general meetings and committee meetings and otherwise performing duties as Director;
 - (ii) as bona fide compensation for a service rendered to the Company by a Director or Member in a professional or technical capacity (other than in the capacity as a Director), where the amount payable is commercially reasonable;
 - (iii) in good faith to any Member for goods supplied in the ordinary course of business; and
 - (iv) in respect of the indemnification of, or payment of premiums on contracts of insurance for, any Director, in accordance with clause 21.
- (c) All other payments by the Company to the Directors must be approved by the Board.

5. Membership

5.1 Number of Members

The number of Members of the Company is unlimited.

5.2 Membership requirements and undertaking

- (a) Every Member must:
 - (i) meet the eligibility requirements in clause 5.4
 - (ii) be approved for membership in accordance with clause 6.1; and
 - (iii) fulfil their obligations under this Constitution.
- (b) Every Member undertakes to the best of their ability to:

- (i) comply with this Constitution and any regulations, policies or standards of the Company in force from time to time; and
- (ii) promote the Objects, interests and standing of the Company.

5.3 Liability of Members and undertaking

- (a) The liability of Members is limited.
- (b) Each Member undertakes to contribute an amount of \$30 to the property of the Company if the Company is wound up while the Member is a Member or within one year after the Member ceases to be a Member, for:
 - (i) payment of the Company's debts and liabilities incurred before the time at which the Member ceased to be a Member;
 - (ii) the costs, charges and expenses of winding up; and
 - (iii) for the adjustment of rights of the contributories among themselves.

5.4 Eligibility and membership rights

- (a) To be eligible as a Member, a person must be a subscriber of 4ZZZ in one of the following classes:
 - (i) an organisation, band or business subscription; or
 - (ii) an individual (including passionate, regular, under-18, concession or other).
- (b) A pet subscriber will have the right to receive notices from the Company, but will not have any other rights of a Member.
- (c) A Member has the right to:
 - (i) receive notices from the Company;
 - (ii) attend, request the convening of, vote at and be heard at all general meetings of the Company;
 - (iii) be elected to, or hold office on, the Board; and
 - (iv) subject to the Board's discretion, be appointed or have its Representative appointed, as applicable to any committee, working party or similar representative body of the Company or the Board, with or without a determinative vote.

5.5 Representatives

- (a) A Member that is an organisation must by notice in writing to the Secretary appoint and remove a natural person to act as its Representative in all matters as permitted by the Corporations Act and subject to any restrictions on the Representative's powers imposed by the Member.

- (b) A certificate executed by the appointing Member is rebuttable evidence of the appointment or removal (as applicable) of a Representative.
- (c) Subject to this Constitution, a Representative is entitled to:
 - (i) exercise at a general meeting all the powers which its appointing Member could exercise if it were a natural person;
 - (ii) be counted towards a quorum on the basis that the Member will be deemed Present at a general meeting by its Representative; and
 - (iii) be nominated as a Director of the Company.
- (d) Where:
 - (i) a Representative's appointment has been revoked; and
 - (ii) the Secretary has not received written notice of the revocation prior to a general meeting,

any vote given at the relevant meeting in accordance with the terms of instrument appointing the Representative is valid.
- (e) If written notice of the appointment of a Representative has not been received in accordance with clause 5.5(a) the Chair of a general meeting may allow a Representative to vote on the condition that they subsequently establish their status as a Representative within a period prescribed by, and to the satisfaction of, the Chair of the general meeting.

6. Application for and cessation of membership

6.1 Application for membership

- (a) An application for membership of the Company shall be made by the applicant in writing in the form approved by the Board from time to time.
- ~~(b) The applicant shall become a member of the Company on lodging the application form accompanied by the required membership fee.~~
- ~~(b) Upon receipt of the application form and membership fee, the Board will determine whether to approve or reject the application in its absolute discretion.~~
- ~~(c) If the Board approves an application, the Secretary or a person officially nominated by the Company must as soon as possible:~~
 - ~~(i) write to the applicant to tell them that their application was approved and request that any applicable Annual Fees are paid within 28 days of receipt; and~~
 - ~~(ii) upon payment of applicable Annual Fee, if payable, the Secretary or a person officially nominated by the Company shall enter the applicant's name in the register of members.~~

~~(e)~~(d) If the Board rejects an application, the Secretary or a person officially nominated by the Company must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.

6.2 Membership fees

~~(a)~~ The ~~annual membership fee~~Annual Fee payable by all Members will be determined by the Board from time to time.

~~(a)~~(b) The Board may, in its absolute discretion, agree to waive or reduce any Annual Fees payable by any Member or class of Members.

~~(b)~~(c) Applicants can apply for membership at any time during the financial year and their membership will stand for 1 year from the date the ~~application is lodged with the membership fee~~Member's name was entered into the Register.

6.3 Failure to pay membership fees

- (a) If any amount owing under clause 6.2 remains unpaid for a period of 30 days after it falls due, a person authorised by the Company will send a notice to the Member requiring payment of the outstanding amount within 14 days of the date of the notice.
- (b) If the amount is not paid within this 14 day period then the Member will at the end of the period automatically and without further notice cease to be a Member.
- (c) Voting rights terminate on cessation of membership.
- (d) The Board may, in its absolute discretion, reinstate the Member on payment of all arrears of amounts owing under clause 6.2.

6.4 No transfer of membership

A right, privilege or obligation of a person by reason of membership:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates upon the cessation of membership.

6.5 Cessation of membership

- (a) A Member will cease to be a Member:

(i) if the Member resigns by notice in writing to the Secretary, in accordance with clause 6.6;

~~(i)~~(ii) fails to pay their Annual Fees in accordance with clause 6.3(b);

~~(ii)~~(iii) is expelled from the Company in accordance with clause 6.7(c);

~~(iii)~~(iv) where the Member is an individual, if the Member dies:

~~(iv)~~(v) where the Member is an organisation, if it is deregistered or otherwise ceases to be an organisation;

- (b) Any Member ceasing to be a Member:
 - (i) will have its name removed from the Register;
 - (ii) is not entitled to any refund (or part refund) of any Annual Fee or other fee already paid; and
 - (iii) will remain liable for and must pay to the Company all fees and any other amounts which were due to the Company at the date of ceasing to be a Member.

6.6 Resignation of Membership

- (a) A member of the Company is not entitled to resign that membership except in accordance with this clause 6.6.
- (b) A member of the Company who has paid all amounts payable to the Company in respect of the Member's membership may resign from membership of the Company by first giving to the Secretary written notice of at least one month (or such other period as the Board may determine) of the Member's intention to resign and, on the expiration of the period of notice, the Member ceases to be a Member.
- (c) If a Member of the Company ceases to be a Member under clause 6.6(b), and in every other case where a Member ceases to hold membership, the secretary must make an appropriate entry in the register of members recording the date on which the Member ceased to be a Member.

6.7 ~~Disciplining and Suspending or~~ expelling Members

- (a) A complaint may be made by any Member of the Company that some other Member of the Company (Defaulting Member):
 - (i) has ~~persistently~~ refused or persistently neglected to comply with a provision or provisions of this Constitution; or
 - (ii) has ~~persistently and wilfully~~ acted in a manner prejudicial or injurious to the character or interests of the Company.
- (b) On receiving such a complaint, the Board must:
 - (i) ~~must~~ cause notice of the complaint to be served on the Defaulting Member ~~concerned~~; and
 - (ii) ~~must~~ give the Defaulting Member at least 14 days from the time the notice is served within which to make submissions to the Board in connection with the complaint; and
 - (iii) ~~must~~ take into consideration any submissions made by the Defaulting Member in connection with the complaint.
- (c) If, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been substantially proved. The the Board may, ~~by resolution, in its sole discretion:~~

(i) ~~_____~~ expel the Defaulting Member from the Company; or

~~(iv)(ii)~~ suspend the Defaulting Member's membership for a determined period from membership of the Company if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been substantially proved.

6.8 Right of Reply of ~~expelled or disciplined member~~Defaulting Member

(a) Where the Board passes a resolution to expel or ~~discipline~~suspend the membership of a Defaulting Member, the Secretary shall, as soon as practicable, cause a notice in writing to be served on the Defaulting Member ~~subject of the resolution~~:

- (i) setting out the resolution of the Board and the grounds on which it is based;
- (ii) stating that the Defaulting Member ~~subject of the resolution~~ may address the Board at the next Board meeting due to be held ~~a meeting to be held not earlier than 14 days and~~ not later than 28 days after the service of the notice;
- (iii) stating the date, place and time of that meeting; and
- (iv) informing the Defaulting Member ~~subject of the resolution~~ that ~~he or she~~they may do either or both of the following:
 - (A) attend and speak at that meeting;
 - (B) submit to the Board at or prior to the date of that meeting written representations relating to the resolution.

(b) At a meeting of the Board held as referred to in clause 6.8(a)(ii)~~(b)~~ the Board shall:

- (i) give the Defaulting Member ~~subject of the resolution~~ an opportunity to make oral representations;
- (ii) give due consideration to any written representations submitted to the Board by the Defaulting Member ~~subject of the resolution~~ at or prior to the meeting; and
- (iii) by resolution determine whether to confirm or to revoke the resolution.

~~(c)~~ Within 7 days of the Board meeting referred to in clause 6.8(b) the Secretary shall notify the Defaulting Member of the Board's decision whether to confirm or revoke the resolution under clause 6.8(b)(iii).

~~(d)~~ A resolution by the Board under clause 6.8(b)(iii) shall be final and binding.

~~(e)~~ Where the Board confirms a resolution under clause (b), the secretary shall, within 7 days after that confirmation, by notice in writing inform the Member subject of the resolution of the reasons for the confirmation and of the right of appeal.

~~(d)~~ A resolution confirmed by the Board does not take effect:

- ~~(i) — until the expiration of the period within which the Member subject of the resolution is entitled to appeal against the resolution where the Member subject of the resolution does not exercise the right of appeal within that period; or~~
- ~~(ii) — where within that period the Member subject of the resolution exercises the right of appeal, unless and until the Company confirms the resolution, whichever is the later.~~

~~6.9 — Right of appeal of expelled member~~

- ~~(a) — An expelled Member may appeal to the Company at a general meeting against a resolution of the Board, within 7 days after notice of the resolution is served on the expelled Member, by lodging with the Secretary a notice to that effect.~~
- ~~(b) — The notice may, but need not, be accompanied by a statement of the grounds on which the expelled Member intends to rely for the purposes of the appeal.~~
- ~~(c) — On receipt of a notice from an expelled Member under clause (a), the Secretary must notify the Board which is to convene a general meeting of the Company to be held within 28 days after the date on which the secretary received the notice.~~
- ~~(d) — At a general meeting of the Company convened under clause (c):~~
 - ~~(i) — no business other than the question of the appeal is to be transacted; and~~
 - ~~(ii) — the Board and the expelled member must be given the opportunity to state their respective cases orally or in writing, or both; and~~
 - ~~(iii) — the Members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.~~
- ~~(e) — If at the general meeting the Company passes a special resolution in favour of the confirmation of the resolution, the resolution is confirmed.~~

7. Register of Members

- (a) The Secretary or a person officially nominated by the Company must keep and maintain a Register containing:
 - (i) the name and address of each Member;
 - (ii) the class of membership of each Member;
 - (iii) the date on which each Member's name was entered into the Register; and
 - (iv) the name and date of appointment of each Representative.
- (b) The Register is available for inspection free of charge by any Member upon request.
- (c) A Member may make a copy of entries in the Register.

8. General meetings

8.1 Annual general meetings

- (a) The Company must hold an annual general meeting once in each calendar year and no later than 5 months after the end of each Financial Year.
- (b) The annual general meeting must be held at the place that the Board sets for the meeting.

8.2 Business at annual general meeting

The business of an annual general meeting is to:

- (a) confirm the minutes of the last preceding annual general meeting and of any other general meeting held since the last annual general meeting;
- (b) unless for the preceding Financial Year the Company was a Small Company Limited By Guarantee, consider the annual report, Directors' report and the auditor's report (if any);¹⁷
- (c) elect Directors;
- (d) (where relevant) appoint the auditor and fix the remuneration of the auditor; and
- (e) transact any other business which under this Constitution or the Corporations Act may properly be brought before the meeting.

8.3 Power of Directors to convene general meeting

- (a) The Board may convene a general meeting of the Company's Members whenever it thinks fit, at any place it thinks fit.
- (b) The Board must convene a general meeting of Members, on the request of Members with at least 5% of the votes that may be cast at a general meeting.
- (c) Subject to the Corporations Act, the Board may cancel or postpone any general meeting or change its venue by giving notice to all persons to whom the notice of the original meeting was given, but may not cancel a general meeting which was called or requested by persons other than the Directors, without the prior written consent of those persons.

8.4 Power of Members to convene a general meeting

- (a) Members with at least 5% of the votes that may be cast at a general meeting may call, and arrange to hold, a general meeting.
- (b) As far as reasonably practicable, a general meeting under this clause 8.4 must be called in the same way in which general meetings of the Company are called.
- (c) The Members calling the general meeting must pay the expenses of calling and holding it under this clause 8.4.

8.5 Members' resolutions at a general meeting

- (a) Members with at least 5% of the votes that may be cast on a resolution may give the Company notice of a resolution they propose to move at a general meeting.
- (b) The notice under clause 8.5(a) must:
 - (i) be in writing;
 - (ii) set out the wording of the proposed resolution; and
 - (iii) be signed by the Members proposing to move the resolution.
- (c) If the Company has been given notice of a Members' resolution under clause 8.5(a), the resolution must be considered at the next general meeting of the Company that occurs more than 2 months after the notice is given.

8.6 Notice of general meetings

- (a) Written notice of a general meeting must be given in accordance with this Constitution to:
 - (i) every Member;
 - (ii) every Director; and
 - (iii) the auditor (if any).
- (b) Notice of general meetings (including annual general meetings) must be provided to Members at least 21 days before the meeting is to be held.
- (c) Subject to the Corporations Act and clause 8.6(d), the Company may call, on shorter notice than that specified in clause 8.6(b):
 - (i) an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree prior to the annual general meeting; and
 - (ii) any other general meeting, if Members holding at least 95% of the votes that may be cast at the general meeting agree prior to the general meeting.
- (d) The Company cannot call a general meeting or annual general meeting on shorter notice than that specified in clause 8.6(b) if a resolution will be moved at the meeting to:
 - (i) appoint or remove a Director; or
 - (ii) remove an auditor.
- (e) Subject to the Corporations Act, the Company may give notices to Members electronically, by notifying the Member:
 - (i) that the notice is available; and
 - (ii) how the Member may use electronic means to access the notice,

by any electronic means permitted by the Corporations Act and to an electronic address nominated by the relevant Member for the purpose of receiving notices.

8.7 Content of notice of general meetings

A notice of a general meeting must:

- (a) specify the place, date and time for the general meeting (and, if the meeting is to be held in 2 or more places in accordance with clause 8.9, the technology that will be used to facilitate this);
- (b) state the general nature of the business to be transacted at the general meeting;
- (c) (if a Special Resolution is to be proposed at the general meeting) set out an intention to propose the Special Resolution and state the resolution; and
- (d) contain a statement of:
 - (i) each Member's right to appoint a proxy; and
 - (ii) the fact that a proxy needs to be a Member of the Company.

8.8 Failure to give notice

Any resolution passed at a general meeting is not invalidated by:

- (a) the accidental omission to give notice of a general meeting to any Member or non-receipt of that notice by a Member; or
- (b) the accidental omission to send out the instrument of proxy to a person entitled to receive notice or non-receipt of that instrument.

8.9 Use of technology

- (a) The Company may hold a general meeting (including an annual general meeting) at 2 or more venues using any technology that gives Members a reasonable opportunity to participate, provided that arrangements are made at each venue for the recording of all votes cast.
- (b) The general meeting is taken to be held where the Chair of the general meeting conducts the general meeting. All proceedings conducted in accordance with this clause 8.9 are as valid as if conducted at a single gathering of a quorum of those entitled to be present.

8.10 Quorum

- (a) No business may be transacted at a general meeting unless a quorum of Members is Present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this Constitution, a quorum constitutes 30 Members Present.

8.11 If a quorum not Present

If a quorum is not Present within 15 minutes after the time appointed for the general meeting in the notice:

- (a) where the meeting is convened on the requisition of Members, the meeting must be automatically dissolved (subject to clause 8.14(a)); and
- (b) in any other case:
 - (i) the meeting stands adjourned to a day and at a time and place as the Directors decide or, if no decision is made by the Directors, to the same day in the next week at the same time and place; and
 - (ii) if no quorum is Present at the resumed meeting within 15 minutes after the time appointed for the meeting, the meeting must be dissolved.

8.12 Chair of general meeting

- (a) Subject to clause 8.12(b), the Chair must preside as chair at every general meeting.
- (b) If the Chair is not present within 15 minutes after the time appointed for the meeting or is unwilling to act as chair:
 - (i) the Directors present must elect a Director to chair the meeting; or
 - (ii) if none of the Directors present wish to act, or in the absence of all Directors, the Members Present must elect one of their number to chair the meeting.
- ~~(c)~~ Where a person is appointed to chair a meeting under clause 8.12(b), in relation to that meeting, references to the Chair in this Constitution include a reference to that person.

~~(e)(d)~~ The Chair 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)).

8.13 Right of officers and advisers to attend general meeting

Any person (whether a Member or not) required by the Directors to attend any general meeting is entitled to be present and, at the request of the Chair of the general meeting, to speak at that general meeting.

8.14 Adjournments

- (a) The Chair may, and must if directed to do so by the general meeting, adjourn a general meeting from time to time and from place to place.
- (b) Only business left unfinished at the meeting which was adjourned may be transacted at a meeting resumed after an adjournment.
- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was in fact passed.

- (d) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of the original meeting. In all other cases it is not necessary to give notice of the adjourned meeting.

8.15 Written resolutions of Members

- (a) A resolution may be passed without a general meeting being held if all the Members 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.
- (b) Identical copies of the document may be distributed for signing by different Members and taken together will constitute the same document.
- (c) The resolution is passed when the last Member signs the document, and satisfies any requirement in this Constitution or the Corporations Act that the resolution be passed at a general meeting.

9. Voting at general meetings

9.1 Voting rights

- (a) Each Member has 1 vote.
- (b) Each person present at the general meeting who represents more than 1 Member, either personally, by proxy, attorney or as Representative, has 1 vote.
- (c) A Member ordinarily entitled to vote is not entitled to vote if ~~their his or her~~ Annual Fee is in arrears at the commencement of the relevant general meeting.

9.2 Members' resolutions

- (a) Except where by law a resolution is required to be a Special Resolution, a resolution put to the vote at a general meeting must be decided by a majority of votes cast by the Members Present at the general meeting.
- (b) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded in accordance with clause 9.3.
- (c) Before a vote is taken, the Chair must inform the general meeting whether any proxy votes have been received and how the proxy votes are to be cast on the resolution.
- (d) A declaration by the Chair that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting is conclusive evidence of that fact. Neither the Chair nor the minutes of the meeting need to state the number or proportion of the votes recorded in favour or against the resolution.

9.3 Voting by poll

- (a) A poll may be demanded by:
 - (i) the Chair;

- (ii) at least 3 Members Present entitled to vote on the resolution; or
 - (iii) Members Present representing at least 5% of the total votes that may be cast on the resolution on a poll.
- (b) A poll may be demanded:
 - (i) before a vote is taken; or
 - (ii) before or immediately after the voting results on a show of hands are declared.
- (c) The demand for a poll may be withdrawn.
- (d) Subject to clause 9.3(e), if a poll is demanded, it is to be taken in the manner and at the time the Chair directs.
- (e) A poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.
- (f) The result of the poll will be the resolution of the meeting at which the poll was demanded.
- (g) The demand for a poll does not prevent a general meeting from proceeding with any other business.

9.4 Chair ~~has no casting vote's casting vote~~

Subject to the Corporations Act, in the case of an equality of votes on a show of hands or on a poll, the Chair of the relevant general meeting ~~has~~does not have a casting vote, ~~in addition to any vote that the Chair may otherwise be entitled to.~~

9.5 Objection to qualification to vote

- (a) An objection to a person's right to vote at a general meeting:
 - (i) may only be raised at the general meeting or adjourned meeting at which the vote objected to is tendered; and
 - (ii) must be determined by the Chair of the meeting, whose decision is final.
- (b) A vote allowed after an objection is valid for all purposes.

9.6 Votes counted in error

If any vote is counted which ought not to have been counted or might have been rejected, the error will not invalidate the resolution unless the error is:

- (a) detected at the same general meeting; and
- (b) of sufficient magnitude, in the opinion of the Chair, as to invalidate the resolution.

10. Proxies

10.1 Appointment of proxies

- (a) A Member who is entitled to attend and vote at a general meeting may appoint a person as that Member's proxy to attend and vote for that Member at a general meeting.
- (b) A proxy needs to be a Member of the Company.

10.2 Rights of proxies

A proxy appointed to attend and vote at a general meeting for a Member in accordance with this clause 10 has the same rights as the Member to:

- (a) speak at the meeting;
- (b) vote (to the extent allowed by the appointment); and
- (c) demand, or join in a demand, for a poll.

10.3 Form of proxy

- (a) An instrument appointing a proxy is valid if it is in the form specified by the Directors from time to time and is:
 - (i) signed by or on behalf of the Member making the appointment; and
 - (ii) contains the following information:
 - (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 meetings at which the appointment may be used.
- (b) The proxy form must provide for the Member to vote for or against each resolution and may provide for abstention to be indicated.
- (c) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution. Where it does so, the proxy is not entitled to vote on the resolution except as specified in the instrument. A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (d) An instrument appointing a proxy will not be valid after 12 months from the date of its execution, unless it is expressly stated to be a standing appointment or to extend for a longer period.

10.4 Where proxy is incomplete

- (a) No instrument appointing a proxy is treated as invalid merely because:

- (i) it does not contain the address of the appointor or proxy;
 - (ii) it is not dated; or
 - (iii) in relation to any or all resolutions, it does not contain an indication of the manner in which the proxy is to vote.
- (b) Where the instrument does not indicate the name of the proxy, the instrument is treated as given in favour of the Chair of the general meeting.

10.5 Lodgement of proxy

- (a) An instrument appointing a proxy is not treated as valid unless:
- (i) the instrument;
 - (ii) and either:
 - (A) the power of attorney or other authority (if any) under which the instrument is signed; or
 - (B) a copy of that power or authority certified in a manner acceptable to the Directors,

are lodged not less than 48 hours (or any shorter period as the Directors may permit, subject to the Corporations Act) before the time for holding the meeting at the place specified for that purpose in the notice of the meeting or, if none, at the Office.

- (b) An instrument appointing a representative to act for a Member at all meetings of the Company or at all meetings for a specified period is not treated as valid unless:
- (i) the instrument of appointment or a certified copy of it, duly signed by hand or electronically authenticated in accordance with clause 10.5(c); and
 - (ii) any evidence as to the validity and non-revocation of that authority as may be required by the Directors,

are lodged not less than 48 hours (or any shorter period as the Directors may permit) before the time for holding the meeting at the place specified for that purpose in the notice of the meeting or, if none, at the Office.

~~(c)~~ For the purposes of this clause 10.5:

~~(d) a legible facsimile of any document which is received at the place specified in the notice is duly lodged at that place at the time when the facsimile is received; and,~~

~~(e)~~(c) subject to the Corporations Act, instead of signing or executing an instrument of appointment, a Member may electronically authenticate the appointment of a proxy, provided that:

- (i) the Member is identified by personal details as required by the Company;

- (ii) the Member's approval of the information communicated to the Company is accompanied by a personal identification number or any other numbers provided by the Company; and
- (iii) the Member complies with any other requirements of the Company.

10.6 Validity of proxy vote

- (a) A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:
 - (i) the previous death or mental incapacity of the appointing Member;
 - (ii) the revocation of the relevant instrument or of the authority under which the instrument was executed; or
 - (iii) the revocation of the power of attorney,
 if no notice in writing of the death, mental incapacity or revocation has been received by the Company at the Office before the commencement of the general meeting or adjourned meeting at which the instrument or power of attorney is used.
- (b) A proxy is not revoked by the appointing Member attending and taking part in the general meeting, unless the Member actually votes on the resolution for which the proxy is proposed to be used.

11. Board of Directors

11.1 Number of Directors

The Company will have at least ~~4~~3 Directors, or such greater number of Directors not exceeding 10, in office at all times. At least 2 of the Directors must be ordinarily resident in Australia.

~~(a) — The Company in general meeting may by ordinary resolution alter the number of Directors, provided that the minimum number is not reduced below 3.~~

11.2 Appointment and removal of Directors

- (a) Subject to the Corporations Act and clause 11.1, the Company may by resolution appoint or remove a Director from office.
- (b) Subject to the Corporations Act and clause 11.1, the ~~Directors-Board~~ may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the number of existing Directors, ~~provided the total number of Directors does not exceed the maximum number specified in clause 11.1(a).~~ That person holds office until the end of the next annual general meeting following their appointment and is eligible for election at that meeting.

11.3 Term of appointment as Director

- (a) No Director may hold office for a period in excess of 2 years without submitting ~~himself or herself~~themselves for re-election.

- (b) At each annual general meeting, the person or persons (if any) standing for election as Director will be, as applicable:
 - (i) any Director required to retire under clause 11.3(a) who stands for re-election;
 - (ii) any Director required to submit for election under clause 11.2(b); and
 - (iii) a person standing for election as a new Director.
- (c) A retiring Director is eligible for re-election without needing to give any prior notice of an intention to submit for re-election and holds office as a Director until the end of the meeting at which the Director retires.
- (d) No director may remain in office for a period longer than ~~6~~10 continuous years.

11.4 Nomination of Directors

- (a) A Member may nominate any other Member for each position on the Board which is to be filled at the next annual general meeting in accordance with this Constitution.
- (b) A nomination under clause 11.4(a) must be in writing, signed by the nominator and be submitted to the Secretary at the Office at least 14 days before the annual general meeting at which the election is to take place.

11.5 Director qualifications

- (a) A Director must be a Member.
- (b) A person must give the Company a signed written consent to act as a Director before being appointed as a Director.

11.6 Vacation of office of Director

In addition to the circumstances in which the office of a Director becomes vacant:

- (a) under the Corporations Act;
- (b) because of a resolution under clause 11.2(a); or
- (c) under clause 11.3;

the office of a Director becomes vacant if the Director:

- (d) becomes physically or mentally incapable of performing the Director's duties and the Board resolves that ~~their his or her~~ office be vacated for that reason;
- (e) is the subject of an Insolvency Event;
- (f) resigns by notice in writing to the Company;
- (g) dies;

- (h) ceases to be a Member;
- (i) is absent (and not represented by an Alternate Director) from meetings of the Directors for a continuous period of 3 months without special leave of absence from the Directors and the Board resolves that ~~their~~ his or her office be vacated; or
- (j) subject to clause 12.7, without the prior or subsequent consent of the other Directors, is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the Director's interest as required by the Act.

11.7 Remuneration and payments to Directors

No payment will be made to any Director other than a payment allowed under clause 4(b).

12. Powers and duties of Directors

12.1 General management power

- (a) Subject to the Corporations Act and this Constitution, the Directors are responsible for managing the business of the Company and may exercise all powers of the Company which are not required to be exercised by the Company in a general meeting by the Corporations Act or this Constitution.
- (b) Without limiting clause 12.1(a), the Directors may exercise all the powers of the Company to:
 - (i) borrow or raise money;
 - (ii) grant security over any property or business of the Company or all or any of its uncalled capital;
 - (iii) pay interest on any debt due by the Company; and
 - (iv) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

12.2 Appointment of attorneys and representatives

- (a) The Directors may, by power of attorney or by general or specific appointment, appoint any person or persons to be an attorney or representative of the Company with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- (b) An appointment under clause 12.2(a) may be made on terms for the protection and convenience of persons dealing with the attorney or representative as the Directors think fit and may also authorise the attorney or representative to delegate all or any of the powers, authorities and discretions vested in the attorney or representative.

12.3 Committees

- (a) The Directors may create a committee or committees consisting of any number of Directors, Members or other persons (including, without limitation, employees or volunteers of the Company) as they think fit.

- (b) The Directors may delegate any of their powers to a committee. In that case:
 - (i) the committee must exercise those powers in accordance with any direction of the Directors; and
 - (ii) a power exercised in accordance with clause 12.3(b)(i) is taken to be exercised by the Directors.
- (c) If the Board does not delegate any of its powers to a committee, that committee will act as an advisory committee only.
- (d) Clauses 13.1, 13.2, 13.4 and 13.5 apply to any committee as if each reference in those clauses to the Directors was a reference to the members of the committee and each reference to a meeting of Directors were to a meeting of the committee.
- (e) Minutes of all the proceedings and decisions of every committee must be made, entered and signed in the same manner in all respects as minutes of proceedings of the Directors are required by the Corporations Act to be made, entered and signed.

12.4 Negotiable instruments and electronic payments

- (a) All negotiable instruments of the Company are to be executed by the persons and in the manner determined by the Directors from time to time.
- (b) All electronic payments by the Company are to be made or authorised in the manner determined by the Directors from time to time.

12.5 By-laws

- (a) The Directors have the power to make by-laws regulating the establishment, organisation and conduct of the Company and its committees, provided such by-laws are not inconsistent with this Constitution or the Corporations Act.
- (b) All by-laws made and in force from time to time are binding on the Members.

12.6 Acts of Directors valid despite defective appointment

Any act done at any meeting of the Directors or of a committee of Directors by any person acting as a Director is, although it is later discovered that there was some defect in the appointment of any such Director or that the Director was disqualified, is valid as if the Director had been duly appointed and was qualified to be a Director or to be a member of the committee.

12.7 Interested Directors

A Director:

- (a) may hold another position (except as auditor) in the Company or any related body corporate on terms as to remuneration, tenure and otherwise that the Directors think fit;
 - (i) may be employed by the Company or act in a professional or technical capacity (except as auditor) on behalf of the Company;

- (ii) is not disqualified, merely because ~~he or she is~~they are a Director, from contracting with the Company in any respect including, but not limited to:
 - (A) selling property to, or purchasing property from, the Company;
 - (B) lending money to the Company with or without interest or security;
 - (C) guaranteeing the repayment of money borrowed by the Company for a commission or profit; or
 - (D) underwriting or guaranteeing the subscription for securities in any related body corporate or other body corporate promoted by the Company or in which the Company is interested as a shareholder or otherwise, for a commission or profit.
- (b) The Directors may exercise the voting rights conferred by shares in any body corporate held or owned by the Company in the manner that they think fit.
- (c) A contract or arrangement made by the Company with a Director or in which a Director is in any way directly or indirectly interested may not be avoided merely because the Director is a party to or interested in it.
- (d) A Director who has a material personal interest in a matter that relates to the affairs of the Company may:
 - (i) be counted in a quorum at a Directors' meeting considering the matter;
 - (ii) be present while the matter is being considered at the meeting; or
 - (iii) vote on the matter,
 except where this is prohibited by the Corporations Act.
- (e) The Directors may make regulations requiring the disclosure of interests that a Director, and any person considered by the Directors as related to or associated with the Director, may have in any matter concerning the Company. Any regulations made under this Constitution bind all Directors.

13. Proceedings of Directors

13.1 Calling and holding Directors' meetings

- (a) The Board or a Director may call a Directors' meeting by giving reasonable notice to each Director.
- (b) The Directors may adjourn and otherwise regulate their meetings as they think fit.

13.2 Meetings by telecommunications

Without limiting the power of the Directors to regulate their meetings as they think fit, the Directors may hold a valid meeting using any medium by which each of the Directors can simultaneously hear all the other participants (including telephone and video conferencing), and in that case:

- (a) the participating Directors are taken to be present at the meeting for the purposes of this Constitution;
- (b) the meeting is taken to be held where the majority of directors are physically present;
- (c) if a failure in communications prevents any Director present at the meeting from participating in the meeting, then the meeting will be suspended until communications are restored, unless communications cannot be restored within 30 minutes, in which case the meeting may carry on without that Director, if they agree, and there is quorum to continue.; and
- (d) all proceedings of the Directors conducted in accordance with this clause 13.2 are as valid and effective as if conducted at a meeting at which all of them were present in person

13.3 Quorum

- (a) At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is 60% of the Directors appointed at the relevant time.
- (b) If the office of a Director becomes vacant, the remaining Directors may act but, if the total number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, the Directors may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or for the purpose of convening a general meeting of the Company.

13.4 Chair

- (a) The Directors must elect a Director to chair Director's meetings (**Chair**) and may decide the period during which the Chair is to hold that office.
- (b) Where a meeting of the Directors is held and:
 - (i) a Chair has not been elected; or
 - (ii) the Chair declines to act or is not present within 15 minutes after the time appointed for the holding of the meeting,
 the Directors present must elect one of their number to chair the meeting.
- (c) Where a person is appointed to chair a meeting under clause 13.4(b), in relation to that meeting, references to the Chair in this Constitution include a reference to that person.

13.5 Directors' resolutions

- (a) Subject to this Constitution, a resolution of the Board must be passed by a majority of the votes of Directors present and entitled to vote on the resolution.
- (b) In case of an equality of votes, the Chair ~~has a second or casting vote in addition to his or her deliberative vote (if any).~~does not have a casting vote.

13.6 Acts of Directors valid despite defective appointment

Any act done at any meeting of the Directors or of a committee of Directors by any person acting as a Director is, although it is later discovered that there was some defect in the appointment of any such Director or that the Director was disqualified, is valid as if the Director had been duly appointed and was qualified to be a Director or to be a member of the committee.

13.7 Minutes

- (a) The Directors must cause minutes to be made of:
 - (i) proceedings and resolutions of general meetings of the Members and resolutions passed by Members without a meeting;
 - (ii) all appointments of Directors, Alternate Directors and officers;
 - (iii) all orders made by the Directors;
 - (iv) proceedings and resolutions of Directors' meetings and resolutions passed by Directors without a meeting,

and retain the minutes in a minute book for a period of at least 10 years or such other period as may be required under the Corporations Act.
- (b) The Company must ensure that minutes are signed within a reasonable time after the date of the meeting or of the resolution being passed by:
 - (i) the Chair of the meeting; or
 - (ii) the Chair of the next meeting; or
 - (iii) in the case of a resolution without a meeting, a Director.
- (c) In the absence of evidence to the contrary, contents of the minute book that is recorded and signed in accordance with this clause 13.7 is evidence of the matters shown in the minute.

13.8 Written resolutions of Directors

- (a) 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.
- (b) Identical copies of the document may be distributed for signing by different Directors and taken together will constitute the same document.
- (c) The resolution is passed when the last Director signs the document.
- (d) Where a committee consists of one Director only, a document signed by that Director and recording a decision of the committee is valid and effective as if it were a decision made at a meeting of that committee and that document constitutes a minute of that decision.

14. Alternate Directors and attendance by proxy

- (a) A Director (Appointing Director) may:
 - (i) with the approval of a majority of the other Directors, appoint a person (who must be a Member); or
 - (ii) without the need for the approval of the other Directors, appoint another Director,

to be an Alternate Director in the Appointing Director's place during any period that the Appointing Director thinks fit.
- (b) The appointment of an Alternate Director:
 - (i) may be terminated or suspended at any time by the Appointing Director; and
 - (ii) terminates automatically if the Appointing Director vacates office as a Director.
- (c) An appointment, or the termination or suspension of an appointment, of an Alternate Director is effected by delivery of a written notice signed by the Appointing Director to the other Directors. Delivery may be by post, fax or electronic message.
- (d) An Alternate Director:
 - (i) is entitled to notice of meetings of the Directors and, if the Appointing Director is not present at such a meeting, is entitled to attend, participate and vote in the Appointing Director's stead; and
 - (ii) subject to any limitation in the appointment of the Alternate Director, may exercise all the powers and perform all the duties of the Appointing Director, except the power to appoint an Alternate Director.
- (e) The exercise of any power by the Alternate Director is as officer of the Company and not as agent of the Appointing Director and the Alternate Director is responsible to the Company for their ~~his or her~~ own acts and omissions.
- (f) Where the Alternate Director is another Director, that Director is entitled to cast a deliberative vote on the Director's own account and on account of each Appointing Director by whom the Director has been appointed as an Alternate Director.
- (g) Except for reimbursement of expenses in accordance with clause 4(b)(i), an Alternate Director is not entitled to receive remuneration for acting as Alternate Director.
- (h) An Alternate Director is not taken into account in determining the number of Directors or rotation of Directors.
- (i) A Director may attend and vote by proxy at any meeting of the Directors provided that such proxy is a Director and has been appointed in writing signed by the

Appointing Director. Such appointment may be general or for any particular meeting or meetings.

15. Secretary

- (a) A person must give the Company a signed written consent to act as Secretary before being appointed as a Secretary.
- (b) A Secretary of the Company holds office on the terms and conditions, as to remuneration and otherwise, as the Directors decide.
- (c) A Secretary must be a Director or Member.
- (d) The Secretary's responsibilities include:
 - (i) keeping the minutes of the meetings of the Board and the Members in one or more books provided for that purpose (electronic or hardcopy);
 - (ii) ensuring that all notices are duly given in accordance with the provisions of this Constitution or as required by law;
 - (iii) maintaining the Register; and
 - (iv) generally performing all duties incidental to the office of secretary of a corporation and such other duties as may be assigned to ~~him or her~~them by the Board from time to time.

16. Seal

16.1 Safe custody

Where the Company has a seal, the Directors must provide for its safe custody.

16.2 Authority to use

The seal must only be used by the authority of the Board, or of a committee of the Directors authorised by the Board to authorise the use of the seal.

16.3 Seal register

- (a) The Secretary must record details of every document to which the seal, if any, is fixed in a seal register.
- (b) Where the Company has a seal, the seal register must be produced at each Directors' meeting for the purpose of the Directors approving the fixing of the seal to each document recorded in the seal register since the last Directors' meeting.

16.4 Additional seal

Where the Company has a seal, the Company may have for use outside the state or territory in which the Office is located, one or more seals each of which must only be used in accordance with this clause 16.

17. Execution of documents

17.1 Execution generally

The Company may validly execute a document (including a deed) if the document is signed by a Director and countersigned by another Director, Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

17.2 Execution using the seal

- (a) The Company need not have or use a seal to execute documents or deeds. The Directors may resolve whether or not the Company is to have or use a seal.
- (b) If the Company has a seal, it may validly execute a document (including a deed) by fixing the seal to the document and the fixing being witnessed by a Director and countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

17.3 Execution by authorised persons

Clauses 17.1 and 17.2 do not limit the ability of the Directors to authorise a person who is not an officer of the Company to execute a document for and on behalf of the Company.

18. Notices

18.1 How notice to be given

The Company may give a notice to any Member by:

- (a) serving it on the Member personally;
- (b) sending it by post to the Member's address as shown in the Register or an alternative address (if any) supplied by the Member to the Company for the purpose of giving notices;
- (c) giving it to a Member's Representative in any manner contemplated by this clause 18.1, where the Member has by written notice to the Secretary required that all notices to be given to the Member be given to its Representative;
- ~~(d) sending it by facsimile to the facsimile number (if any) nominated by the Member for the giving of notices;~~
- ~~(e)~~(d) sending it by email to an email address nominated by the Member;
- ~~(f)~~(e) sending it via any other electronic means permitted by the Corporations Act and nominated by the Member for the giving of notices, including providing an electronic link to the notice; or
- ~~(g)~~(f) giving it by any other means permitted by the Corporations Act.

18.2 When notice is given

A notice is deemed to be given by the Company and received by the Member:

- (a) if delivered in person, when delivered to the Member;
- (b) if posted, on the day after the date of posting to the Member, whether delivered or not; or
- ~~(c) — if sent by facsimile transmission, on the day after the date of its transmission; or~~
- ~~(d)~~(c) if sent by email or other electronic means, on the day after the date of its transmission,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am (addressee's time) on the next Business Day.

18.3 No notice of no valid address

If:

- (a) any Member has not provided to the Office an address for registration in the Register; or
- (b) the Company believes that a Member is not known at the address registered in the Register,

unless and until the Member provides a valid address to the Office, all notices to be sent to that Member are taken to be given to the Member if the notice is displayed at the Company's Office for 48 hours, and are taken to be served at the commencement of that period.

19. Audit and accounts

19.1 Company must keep accounts

- (a) The Company must keep accounts in accordance with the requirements of the Corporations Act or the ACNC Act (as applicable).
- (b) The Company must allow the Directors and the auditor to inspect those accounts at all reasonable times.

19.2 Audit

If required by the Corporations Act or the ACNC Act (as applicable), the Board must cause the Company's financial report for each Financial Year to be audited and obtain an auditor's report.

19.3 Financial reporting

The Board must cause the Company to comply with all financial reporting obligations imposed on it under the Corporations Act or the ACNC Act (as applicable).

20. Inspection of records

- (a) Subject to the Corporations Act or the ACNC Act (as applicable), the Directors must determine whether and on what terms the accounting records and other documents of the Company or any of them will be open to the inspection of Members other than Directors.
- (b) A Member other than a Director does not have the right to inspect any document of the Company except as provided by the Corporations Act or ACNC Act (as applicable), or otherwise as authorised by the Directors or by the Company in general meeting.

21. Indemnity and insurance

21.1 Definition

In this clause **Officer** has the meaning given in section 9 of the Act.

21.2 Company may indemnify Officers

To the full extent permitted by law and without limiting the powers of the Company, the Company may indemnify any person who is or has been an Officer of the Company, or of a related body corporate of the Company against all losses, liabilities, damages, costs, charges and expenses of any kind incurred by the Officer as an officer of the Company or of a related body corporate.

21.3 Documentary indemnity and insurance policy

To the extent permitted by the Corporations Act and any applicable law and without limiting the powers of the Company, the Directors may authorise the Company to, and the Company may, enter into any:

- (a) documentary indemnity in favour of; or
- (b) insurance policy for the benefit of,

a person who is, or has been, an Officer of the Company or of a related body corporate of the Company, which indemnity or insurance policy may be in such terms as the Directors approve and, in particular, may apply to acts or omissions prior to or after the time of entering into the indemnity or policy.

22. Affiliation and membership of other similar organisations

The Company may in general meeting determine to affiliate with or become a member of, or to accept affiliation or membership of, any organisation (including any regional or international association) having similar or like interests to the Company.

23. Winding up

- (a) If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property or assets whatsoever, such property or assets will not be paid to or distributed among the Members, but will be given or transferred to another organisation or organisations:

- (i) with objects similar to the Objects; and
- (ii) which prohibits the distribution of its income and property amongst its members to an extent at least as great as imposed on the Company under clause 4,
- (iii) and determined by a Special Resolution of Members or if it not practicable to obtain such a Special Resolution, by a Judge of a Court of Queensland who has jurisdiction in the matter.

24. Variation or amendment of Constitution

This Constitution may be varied or amended from time to time by Special Resolution of the Members, in accordance with the Corporations Act.

Schedule 1 – Public Fund

1. The Company shall establish and maintain a public fund (“the public fund”).
2. The name of the public fund shall be “Public Fund of 4ZZZ FM”.
3. The Company shall apply for listing of the public fund on the Register of Cultural Organisations of the Department of the Environment, Water, Heritage and the Arts of the Commonwealth of Australia (“ROCO”) and shall use reasonable endeavours to maintain such listing of the public fund.
4. ~~All and any~~ Donations to the public fund shall be deposited into the public fund listed on ROCO. All donated moneys shall be kept separate from other funds of the Company and will only be used to further the principal purpose of ~~the Company, namely, acquiring, equipping, maintaining, conducting and arranging, on an access basis, a broadcasting studio and premises for the broadcasting of quality programs of a creative nature, such as music, art and literature and programs of news and interest to the community, promoting radio.~~
5. The investment of donated moneys in the public fund shall be done in accordance with the guidelines for public funds as specified by the Australian Tax Office from time to time.
6. The public fund shall not receive any money or property other than donations.
7. All interest accruing on the donated moneys to the public fund shall be credited to the public fund.
8. The public fund shall be administered by a management committee or a subcommittee of the management committee, the majority of whom, because of their tenure of some public office or their professional standing, have an underlying community responsibility, as distinct from obligations solely in regard to the cultural objectives of the Company.
9. No moneys/assets in this public fund will be distributed to members or office bearers of the Company except as reimbursement of out-of-pocket expenses incurred on behalf of the public fund or proper remuneration for administrative services.
10. The Department of the Commonwealth of Australia responsible for the administration of ROCO shall be notified of any proposed amendments or alterations to provisions concerning the public fund, to assess the effect of any amendments on the public fund’s continuing Deductible Gift Recipient status.
11. All receipts for gifts to the public fund must state:
 - (a) the name of the public fund and that the receipt is for
 - (b) a gift made to the public fund;
 - (c) the Australian Business Number of the Company;
 - (d) the fact that the receipt is for a gift; and
 - (e) any other matter required to be included on the receipt pursuant to the requirements of the *Income Tax Assessment Act 1997(Commonwealth)* from time to time.

Winding-up clause

12. If upon the winding-up or dissolution of the public fund listed on the Register of Cultural Organisations ~~ROCO~~ there remains after satisfaction of all its debts and liabilities, any property or funds, the property or funds shall not be paid to or distributed among the members of the Company but shall be given or transferred to some other fund, authority or institution having objects similar to the objects of this public fund, and whose rules shall prohibit the distribution of its or their income among its or their members, such fund, authority or institution to be eligible for tax deductibility of donations under Subdivision 30-B, section 30-100, of the Income *Tax Assessment Act 1997* and listed on the Register of Cultural Organisations maintained under the Act.