

Constitution of
Indigenous Art Code Limited
(ACN 139 788 711)

The Corporations Act

A company limited by guarantee

Registered in the Australian Capital Territory

[Note: This document may contain the names of deceased persons]



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Constitution of Indigenous Art Code Limited (ACN 139 788 711), a public company limited by guarantee.

1. Definitions and Interpretation

1.1 Definitions

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

Agent means a person or organisation who sells Artwork for or on behalf of an Artist in return for a commission.

Application means a duly completed and signed application for membership of the Company in the form determined from time to time by the Directors, under which applicants who are Dealers agree, amongst other things, to become a signatory to the Code.

Artist means an artist of Aboriginal and/or Torres Strait Islander descent, who identifies as Aboriginal and/or Torres Strait Islander, and is recognised as such by members of the community with which the artist identifies.

Artwork means a work of art or craft produced by an Artist, whether or not incorporated into another work of art or craft produced by that Artist or another person, including but not limited to painting, drawing, artists' books, woodwork, ceramics, glass, jewellery, sculpture, fibre work, printmaking, photography, installation, video and multimedia.

ATO means the Australian Taxation Office.

Board-Appointed Director has the meaning given in Rule 11.1(b).

Chair means a person occupying the position of chair or co-chair of the Directors under Rule 13.6.

Code means the Indigenous Art Code as set out in Schedule 1, as amended from time to time.

Company means Indigenous Art Code Limited (ACN 139 788 711).

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

Dealer means:

- (a) an Agent; or
- (b) a person or organisation who is not an Agent but who acquires Artwork, or who carries on business involving the acquisition of Artwork, for re-supply by means of sale or other distribution which may include but is not limited to a wholesaler, retailer, art gallery, auction house or art centre.

Dealer Director has the meaning given in Rule 11.1(a).

Dealer Member has the meaning given in Rule 5.5(a).

Deductible Gift Recipient has the meaning given in the Tax Act.

Director means a person appointed or elected to the office of director of the Company in accordance with this Constitution and, where appropriate, includes an alternate director.

Gift means a donation, contribution, gift, settlement, benefaction or other voluntary transfer or disposition of money, money's worth, property or benefits and whether inter vivos or by will.

Inaugural Directors means those Directors at the date of adoption of this Constitution as listed in Schedule 2.

Indigenous means a person of Aboriginal and/or Torres Strait Islander descent who identifies as Aboriginal and/or Torres Strait Islander, and is recognised as such by members of the community with which the person identifies.

Member means a person admitted to the membership of the Company in accordance with the provisions of this Constitution.

Member Present means, in connection with a meeting, the Member present at the venue or venues for the meeting, in person or by proxy, by attorney or, where the Member is a body corporate, by representative.

Prescribed Mandatory Code means any prescribed mandatory industry code regulating the conduct of participants in the Indigenous visual arts industry declared by regulations under section 51AE of the *Competition and Consumer Act 2010* (Cth).

Responsible Person means an individual who is considered to have a degree of responsibility to the community as a whole (as distinct from holding obligations solely in regard to the cultural objectives of the Company) and is known to a broad section of the community, including an individual who:

- (a) performs a significant public function;
- (b) is a member of a professional body having a code of ethics or rules of conduct;
- (c) is officially charged with spiritual functions by a religious institution;
- (d) has received formal recognition from government for services to the community; or
- (e) is approved as a Responsible Person by the Commissioner of Taxation.

Secretary means a person appointed as secretary of the Company in accordance with this Constitution.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless any contrary intention appears in this Constitution or the context requires otherwise:

- (a) The singular includes the plural and conversely.
- (b) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a Rule, Schedule, paragraph or sub-paragraph is to a Rule, Schedule, paragraph or sub-paragraph, as the case may be, of this Constitution.

- (d) A reference to any legislation or to any provision of any legislation includes any modification or re enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (e) A word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution (unless defined herein).
- (f) If there is any inconsistency between the provisions of this Constitution and the provisions of the Code then the provisions of this Constitution will prevail to the extent of the inconsistency and the provisions of the Code will be construed accordingly.
- (g) A reference to a person or persons includes an organisation as well as an individual or body corporate, and a reference to a person, organisation, body corporate or other entity includes its permitted successors and assigns.

2. Replaceable Rules and Transitional Matters

- (a) The replaceable rules contained in the Corporations Act do not apply to the Company.
- (b) This Constitution supersedes the Constitution in force immediately before adoption of this Constitution.
- (c) Everything done under the previous Constitution of the Company continues to have the same operation and effect after the adoption of this Constitution as if properly done under this Constitution. In particular (without limitation) every Director in office immediately before the adoption of this Constitution is taken to have been appointed and continues in office under this Constitution.

3. Objects

3.1 Principal object of the Company

The principal object of the Company is the promotion of Indigenous visual arts.

3.2 Objects of the Company

In the furtherance of the Company's principal object, the objects of the Company specifically include to:

- (a) implement measures that support the retention and promotion of Indigenous culture through professional arts practices designed to underpin the value and integrity of the Indigenous visual arts sector;
- (b) implement measures that support the Company being, and being perceived by the Indigenous visual arts sector and the public in general to be, truly representative of Artists, and Dealers and other persons who support the purpose and objectives of the Code and any Prescribed Mandatory Code;
- (c) encourage the involvement of Indigenous persons in the affairs of the Company with the aim of increasing the number of Indigenous Members and Directors;
- (d) promote the purpose of the Code to encourage:
 - (i) fair and ethical trade with Artists;
 - (ii) transparency in the process of promotion and sale of Artwork; and
 - (iii) a fair and equitable dispute resolution system for disputes arising under the Code;
- (e) encourage Dealers to become signatories to, and comply with, the Code;
- (f) co-ordinate and liaise with government, governmental and regulatory bodies, Artists and Dealers in relation to the process of promotion and sale of Artwork in pursuit of the objectives of the Code;
- (g) implement and oversee the application of the Code, as amended from time to time;
- (h) deal with issues relating to compliance with the Code;
- (i) report on the operation and effectiveness of the Code in achieving its objectives;
- (j) promote the Code among the public in general and, in particular, the Indigenous visual arts sector;
- (k) seek government and stakeholder support for a Prescribed Mandatory Code and, if support is obtained, co-ordinate and liaise with government and governmental and regulatory bodies in relation to the establishment, implementation and operation of a Prescribed Mandatory Code.
- (l) collect funds and solicit and accept financial and other aid, subscriptions, donations and bequests from any person and from government and public bodies and otherwise borrow or raise funds for the pursuit of the above objects;
- (m) obtain from any government or authority, whether federal or state, local or otherwise (and enter into any arrangements with any such government or authority for the purpose of obtaining) any rights, privileges and concessions which the Company may consider it desirable to obtain for the pursuit of the above objects, and carry out, exercise and comply with any such arrangements, rights, privileges and concessions; and
- (n) do all other things which the Directors decide from time to time are necessary, convenient or incidental to carry out, or conducive to the attainment of, these objects.

3.3 Application of income and property to objects

- (a) Subject to paragraph (b), the income and property of the Company must only be used to further the objects of the Company set out in Rule 3.1 and 3.2 and no part of that income or property may be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to any Member or Director.
- (b) Paragraph (a) does not prevent the Company from making a payment in good faith approved by the Directors:
 - (i) to a Member of reasonable and proper remuneration for services provided to the Company;
 - (ii) to a Member or Director for out of pocket expenses incurred on behalf of the Company or in the performance of any duty as Director;
 - (iii) to a Member or Director for goods supplied in the ordinary course of business to the Company;
 - (iv) to a Member or Director of reasonable and proper rent for premises let to the Company by a Member or Director;
 - (v) to a Member or Director, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Directors and where the amount payable is not more than a commercially reasonable amount for that service;
 - (vi) by way of interest on money borrowed from a Member or Director, at a rate not exceeding the rate charged by the Company's principal banker on overdrawn accounts;
 - (vii) for an insurance premium in respect of a contract insuring a Director for a liability incurred as an officer of the Company; or
 - (viii) to a Director in respect of the indemnity under Rule 18.

4. Public Gift Fund

4.1 Establishment of Public Gift Fund

The Company must establish and maintain a fund listed on the Register of Cultural Organisations (the **Public Gift Fund**) to which Gifts to the Company are to be made subject to the following:

- (a) the objects of the Public Gift Fund will comprise some or all of the objects of the Company set out in Rule 3;
- (b) the Company will invite members of the public to make Gifts to the Public Gift Fund;

- (c) any monetary Gifts received by the Company under paragraph (b) will be accepted by the Company and deposited into or credited to the Public Gift Fund in the following manner:
 - (i) they will be placed in a separate bank account established for the purpose of the Public Gift Fund; and
 - (ii) receipts under the name of the Company will be issued to the person who made the Gift to the Company and will state:
 - (A) the Australian Business Number of the Company;
 - (B) the name of the Public Gift Fund and that the receipt is for a Gift made to the Public Gift Fund;
 - (C) the fact that the receipt is for a Gift; and
 - (D) any other information which is required under the Tax Act;
- (d) all monies made to the Public Gift Fund will be kept separate from other funds of the Company and will only be used to further the objects of the Company;
- (e) the Public Gift Fund must be managed by a committee appointed under Rule 13.10 (a majority of whom must be Responsible Persons) (**Public Gift Fund Committee**);
- (f) money in the Public Gift Fund must operate on a non-profit basis and must not be distributed to members of the committee appointed under paragraph (e) or of the Company, except to members of the Public Gift Fund Committee as reimbursement for out-of-pocket expenses properly incurred by them in carrying on their duties as a member of the Public Gift Fund Committee or as proper remuneration for administrative services performed in satisfaction of the objects of the Public Gift Fund and, in both cases, provided that the amount payable has been approved by the Directors; and
- (g) the Public Gift Fund must operate otherwise in accordance with any applicable requirements of the Tax Act and any guidelines for public funds as specified by the ATO.

4.2 Accounting policies

The Company must establish and maintain internal accounting policies exclusively for money, property and benefits received for the Public Gift Fund.

4.3 Books of account

The Company must ensure that proper books of account and other records are kept in respect of all receipts and payments and otherwise in relation to the Public Gift Fund.

4.4 Notice of amendments

- (a) The Company must notify the ATO and the Government Department responsible for the administration of the Register of Cultural Organisations as soon as practicable of any changes to the rules governing the Public Gift Fund and any

other matters that the ATO or Government Department requires notification of from time to time.

- (b) If the Company becomes aware that it is no longer entitled to be endorsed as a Deductible Gift Recipient for the operation of the Public Gift Fund, the Company must notify the ATO as soon as practicable.

4.5 Winding up or revocation of endorsement

If on the earlier of the winding up or dissolution of the Public Gift Fund listed on the Register of Cultural Organisations, and if the Company is endorsed as a Deductible Gift Recipient because of the Public Gift Fund the revocation of that endorsement, there remains after satisfaction of all its debts and liabilities, any property or funds, the property or fund shall not be paid to or distributed among its members, but shall be given or transferred to some other fund, authority or institution having objects similar to the objects of this Public Gift 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.

5. Membership

5.1 Members of the Company

The Members are those persons admitted to the membership of the Company whose names are entered into the Company's register of members.

5.2 Limited liability of Members

The liability of the Members of the Company is limited.

5.3 Members' liability on winding up

Each Member undertakes to contribute to the assets of the Company in the event of it being wound up while they are a Member, or within one year after they cease to be a Member, for payment of the debts and liabilities of the Company and of the costs, charges and expenses of winding up, such amount as may be required not exceeding \$50.00.

5.4 Admission as a Member

- (a) A person who wants to apply for admission as a Member must submit an Application to the Secretary together with any applicable application fee.
- (b) The Directors will consider the Application and decide whether or not to admit the applicant as a Member in their absolute discretion.
- (c) If the Directors decide not to admit an applicant as a Member, they do not have to give any reasons for their decision.
- (d) When an applicant is to be admitted as a Member, the Secretary must notify the applicant and request payment of any applicable membership fees.

- (e) If the applicant does not pay the membership fees, if any, within 21 days after the date on which the applicant is notified that the fees are payable, the Directors may, in their absolute discretion, cancel the acceptance of the applicant's Application for membership.
- (f) When the Company receives payment from the applicant of the applicable membership fees, or if there is no membership fee, when the Directors decide to admit the applicant as a Member, the applicant will be registered in the Company's register of Members and will immediately become a Member.

5.5 Categories of Members

- (a) There will be a class of Members known as Dealer Members. Dealer Members are Dealers who have applied in the correct form (which includes agreeing to become a signatory to the Code) and whose Applications have been approved by the Directors under Rule 5.4.
- (b) There may be a class of Members known as Artist Members. Artist Members are Artists who have applied in the correct form (which does not include agreeing to become a signatory to the Code) and whose Applications have been approved by the Directors under Rule 5.4.
- (c) There may be a class of Members known as Code Supporter Members. Code Supporter Members are persons who are collectors of Artwork and/or supportive of the objects of the Code and the Company (but who are not Dealers) who have applied in the correct form (which does not include agreeing to become a signatory to the Code) and whose Applications have been approved by the Directors under Rule 5.4.
- (d) The Directors may determine and admit different classes of Members. Subject to Rule 8, the Directors may vary or cancel the rights of Members in any class.

5.6 Membership fee

- (a) The Directors may from time to time determine an entrance fee and/or an annual subscription (**membership fees**) for any class of Members (which may be a different amount to that payable by any other class of Members) and the terms of payment of such membership fees.
- (b) If annual subscriptions are payable, the Directors may determine when the annual subscription period commences, when annual subscriptions are due and payable and any other requirements or arrangements for the payment of subscriptions as the Directors think necessary or appropriate.
- (c) If a membership fee has been set for a particular class of Members, each Member of that class must pay the fee by the due date specified by the Directors.
- (d) The Directors may in their absolute discretion vary the amount of any membership fee.

5.7 Resignation of a Member

A Member may resign from the Company by giving notice in writing to the Secretary. The resignation will be effective from the date it is received by the Secretary.

5.8 Non-payment of membership fee

- (a) If any membership fee of a Member remains unpaid for a period of 28 days after it becomes due, the Secretary will give notice to the Member of that fact.
- (b) If any membership fee remains unpaid for more than 30 days (or such longer period determined by the Directors) after the date of the notice given under paragraph (a), the Directors may cancel the membership of the Member and remove the Member's name from the register of Members.

5.9 Termination or suspension of membership

- (a) Any Member whose conduct, in the opinion of the Directors, is contrary to the best interests of the Company may, by resolution of the Directors:
 - (i) have their membership of the Company terminated and their name removed from the register; or
 - (ii) have their rights and privileges of membership of the Company suspended for such period as the Directors determine.
- (b) At least 21 days before the Directors meet to consider the question of action against a Member under Rule 5.9, the Directors must send a notice to the Member which states:
 - (i) all relevant information known to the Directors, including any alleged conduct of the Member; and
 - (ii) the manner in which the Member is invited to address the meeting.
- (c) A person whose membership of the Company has been terminated or whose rights and privileges of membership have been suspended, does not have any claim on the Company, its funds or property.

5.10 No obligation to provide reasons

The Directors are not obliged to give reasons for any decision they make under Rule 5.9.

5.11 Ceasing to be a Member

A Member's membership of the Company will automatically cease:

- (a) in the case of a Member who is a natural person, on the date that:
 - (i) the Member dies; or
 - (ii) the Member becomes of unsound mind or a person or estate is liable to be dealt with in any way under the law relating to mental health; or
 - (iii) the Member becomes a person whose estate or assets are liable to be dealt with in any way under the laws relating to mental health; or

- (b) in the case of a Member which is a body corporate, on the date that:
- (i) a liquidator is appointed in connection with the winding up of the Member;
or
 - (ii) an order is made by a court for the winding up or deregistration of the Member,

and, in either case, where the Member is a Dealer Member, on the date that the Member ceases to be a signatory to the Code.

5.12 Liability after a person ceases to be a Member

A person who ceases to be a Member must immediately pay to the Company:

- (a) all membership fees or other amounts owing to the Company which are due and unpaid at the date that the person ceases to be a Member; and
- (b) amounts which the Member is liable to pay under Rule 5.3.

5.13 Register of Members

The register of Members must be kept by the Secretary and must contain the full name and address of each Member and any other information required by the Directors.

5.14 Address of Members

Every Member must inform the Secretary in writing of any change in their address and any such change of address must be entered in the register of Members. The latest address in the register of Members is deemed to be the Member's registered address.

6. General Meetings

6.1 Power to call a general meeting

A majority of Directors may convene a general meeting of the Company to be convened at the time and place or places (including at two or more venues using technology that gives Members a reasonable opportunity to participate) whenever they think fit.

6.2 Power to cancel or postpone a general meeting

A majority of Directors may cancel or postpone any meeting convened, by notice in writing to all persons who were entitled to receive notice of that meeting, except where the cancellation or postponement would be contrary to the Corporations Act. Any failure to give notice of cancellation or postponement does not invalidate the cancellation or postponement or any resolution passed at a postponed meeting.

6.3 Non-receipt of notice

The fact that a person entitled to receive notice of a general meeting does not receive that notice or is accidentally not given notice, does not invalidate any resolution passed at the meeting.

6.4 Business of general meetings

- (a) Subject to paragraph (b), unless all Members are present as Members Present and agree otherwise, the only business to be transacted at a general meeting will be that set out in the notice.
- (b) The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:
 - (i) the consideration of the annual financial report, Directors' report and Auditor's report;
 - (ii) the election of Directors;
 - (iii) the appointment of the Auditor; and
 - (iv) the fixing of the Auditors' remuneration.

6.5 Right of others to attend general meeting

- (a) A Secretary or Director who is not a Member is entitled to be present, and, at the request of a Chair, to speak at any general meeting.
- (b) Any other person (whether a Member or not) requested by the Directors to attend any general meeting is entitled to be present and, at the request of a Chair, to speak at that general meeting.

7. Proceedings at General Meetings

7.1 Requirement for a quorum

No business may be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.

7.2 Number for a quorum

Except as otherwise provided in this Constitution, three Members Present and entitled to vote, constitutes a quorum.

7.3 No quorum

- (a) If there is no quorum at a general meeting within 30 minutes after the time specified in the notice of the meeting, the meeting is dissolved unless the Directors adjourn the meeting to a date, time and place or places determined by the Directors.
- (b) If no quorum is present at any adjourned meeting within 30 minutes after the time appointed for the meeting, the meeting is dissolved.

7.4 Chair of general meetings

Subject to Rule 7.5, a Chair or, in the absence of a Chair, the deputy chair, is entitled to preside as chair at every general meeting. Where two co-Chairs have been elected as provided by Rule 13.6(a), they shall act jointly as co-chairs of the meeting unless they otherwise agree.

7.5 Absence of Chair

Where a general meeting is held and:

- (a) there is no Chair or deputy chair; or
- (b) a Chair or deputy chair is not present within 15 minutes after the time appointed for the meeting or does not wish to act as chair of the meeting,

the Directors present may elect one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the Members Present and entitled to vote may elect one of their number to be chair of the meeting.

7.6 Conduct of general meetings

- (a) The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the chair of the meeting.
- (b) The chair of the meeting may make rulings without putting the question (or any question) to the vote if the chair of the meeting considers action is required to ensure the orderly conduct of the meeting.
- (c) At any time the chair of the meeting considers it necessary or desirable for the proper and orderly conduct of the meeting, the chair of the meeting may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members Present and entitled to vote.
- (d) Any determination by the chair of the meeting in relation to matters of procedure (including any procedural motions moved at, or put to, any meeting) or any other matter arising directly or indirectly from the business is final (including any procedural motions moved at, or put to, any meeting). Any challenge to a right to vote (whether on a show of hands or on a poll) or to a determination to allow or disregard to vote may only be made at the meeting and may be determined by the chair of the meeting whose decision is final.
- (e) If a person purports to cast a vote in contravention of the Corporations Act or this Constitution, the chair of the meeting may determine that the vote be disregarded and treated as not having been cast.
- (f) Nothing contained in this Rule limits the powers conferred on a chair of a meeting by law.

7.7 Adjournments

- (a) During the course of a general meeting, the chair of the meeting may, and if so directed by the meeting must, adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to a meeting held at another time and place or places determined by the chair of the meeting.

- (b) If the chair of the meeting exercises a right of adjournment under paragraph (a), the chair of the meeting has the sole discretion to decide whether to seek the approval of the Members Present to the adjournment and, unless the chair of the meeting exercises that discretion, no vote may be taken by the Members Present in respect of the adjournment.
- (c) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (d) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

7.8 Voting at general meetings

- (a) Each question submitted to a general meeting is to be decided by a show of hands of the Members Present and entitled to vote unless a poll is demanded.
- (b) Unless a poll is demanded, a declaration by the chair of the meeting following a vote on a show of hands that a resolution has been passed or lost is conclusive.
- (c) A poll may be demanded by a Member in accordance with the Corporations Act (and not otherwise) or by the chair of the meeting. No poll may be demanded on the election of a chair of a meeting or, unless the chair of the meeting otherwise determines, the adjournment of a meeting. A demand for a poll may be withdrawn.

7.9 Procedure for polls

- (a) When demanded, a poll may be taken in the manner and at the time the chair of the meeting directs.
- (b) The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) as the chair of the meeting considers appropriate.
- (c) The result of the poll is the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll does not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

7.10 Special meetings

All the provisions of this Constitution as to general meetings apply to any special meeting of any class of Members which may be held under the operation of this Constitution or the Corporations Act.

8. Rights of Dealer Members

The rights or obligations of Dealer Members contained under the Code may be varied or cancelled only if, at a meeting of Dealer Members, a resolution in favour of that variation or cancellation is passed by special resolution.

9. Votes of Members

9.1 Voting rights

Subject to this Constitution and any rights or restrictions for the time being placed on any Member at meetings of Members or classes of Members:

- (a) each Member entitled to attend and vote may attend and vote in person or by proxy, by attorney or (where the Member is a body corporate) by representative; and
- (b) each Member Present and entitled to vote has one vote both on a show of hands and a poll.

9.2 Restrictions on voting rights

- (a) A Member is not entitled to vote unless all sums presently payable by the Member in respect of membership of the Company have been paid.
- (b) A Member is not entitled to vote during any period in which the Member's rights and privileges of membership are suspended pursuant to Rule 5.9.

9.3 Right to appoint proxy

- (a) A Member who is entitled to attend and vote at a meeting of the Company may appoint one proxy to attend and vote for the Member in accordance with the Corporations Act.
- (b) A proxy need not be a Member.

9.4 Form of proxy

A form of appointment of a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) which the Directors may prescribe or accept.

9.5 Lodgement of proxies

An instrument appointing a proxy is not valid unless it and the power of attorney or other authority (if any) under which the instrument is signed is received at the registered office of the Company or, if notice of a meeting provides for electronic lodgement of proxies, at the electronic mail address specified in the notice, not less than 48 hours before the time for commencement of the meeting or adjourned meeting at which the proxy proposes to vote.

9.6 Validity of proxies

- (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 unsoundness of mind of the principal; or
- (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or the power,

if no notice in writing of the death, unsoundness of mind or revocation (as the case may be) has been received by the Company at its registered office at least 48 hours (or any shorter period as the Directors may permit or specified by the Corporations Act) before the commencement of the meeting, or adjourned meeting at which the instrument is used or the power is exercised.

- (b) A proxy is not revoked by the principal attending and taking part in the meeting unless the principal actually votes at the meeting on a resolution for which the proxy is proposed to be used.

9.7 Where proxy is incomplete

- (a) No instrument appointing a proxy is treated as invalid merely because it does not contain:
 - (i) the address of the appointor or of a proxy;
 - (ii) the proxy's name or the name of the office held by the proxy; or
 - (iii) in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.
- (b) Where the instrument does not specify the name of a proxy, the instrument is taken to be given in favour of the chair of the meeting.
- (c) A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.

10. Inaugural Directors

- (a) Each of the Inaugural Directors listed in paragraphs (a) to (d) of Schedule 2 must retire from office at the conclusion of the first annual general meeting after the Inaugural Director was appointed but shall be eligible for re-election.
- (b) Each of the Inaugural Directors listed in paragraphs (e) to (j) of Schedule 2 are appointed for the term agreed by the Directors and notified to the Board-Appointed Director but shall be eligible for re-election.

11. Appointment and Removal of Directors

11.1 Number of Directors

The number of Directors (not including alternate Directors) must be not less than five and not more than fifteen Directors (unless otherwise determined in general meeting) of whom:

- (a) not less than two Directors and not more than four Directors must be a Dealer Member or an authorised representative of a Dealer Member elected in accordance with Rule 11.2 (the **Dealer Directors**); and

- (b) not less than three Directors and not more than eleven Directors must be appointed by the Directors in accordance with Rule 11.3 (the **Board-Appointed Directors**).

11.2 Election of Dealer Directors

- (a) Subject to Rule 11.2(f), the Dealer Directors must, to the extent possible having regard to the number of Directors, be comprised as follows:
 - (i) one Director must be an authorised representative of an art centre;
 - (ii) one Director must be, or be an authorised representative of, a current member of the Australian Commercial Galleries Association;
 - (iii) one Director must be, or be an authorised representative of, a current member of the Australian Indigenous Art Trade Association; and
 - (iv) one Director must be, or be an authorised representative of, a Member who is not affiliated with the Australian Commercial Galleries Association or the Australian Indigenous Art Trade Association,
- (b) The Directors must seek nominations from the Members for candidates for election as Dealer Directors and specify each category set out in Rule 11.2(a) for which nominations are sought.
- (c) Members may nominate an individual or, if they are a Dealer Member, themselves, for election as a Dealer Director, and the nomination must:
 - (i) be in writing and provided to the Directors within any time period (if any) that the Directors have specified;
 - (ii) be accompanied by the individual's written consent to be appointed as a Director; and
 - (iii) state which category set out in Rule 11.2(a) the individual is nominated for.
- (d) The Directors will:
 - (i) review the nominations to determine that the candidates meet the requirements of the relevant category set out in Rule 11.2(a); and
 - (ii) put all complying nominations to the Company for vote at the next general meeting.
- (e) The candidate with the most votes in each category will be elected as a Director on and from the date of that meeting.
- (f) In the event that no nomination is received for one or more of the above categories, the relevant Dealer Director position or positions will be filled from amongst all the remaining nominee or nominees in the order of who achieved the most votes.
- (g) If a casual vacancy arises in the Dealer Directors, the Directors may appoint a person who has consented to act as a Director, who, in their opinion, meets the requirements of the category in which the casual vacancy arises, for the remainder of the term of the Dealer Director that the person is replacing.

11.3 Appointment of Board-Appointed Directors

- (a) The Board-Appointed Directors must, to the extent possible having regard to the number of Directors, comprise:
 - (i) not less than one Director and not more than three Directors must be an Artist;
 - (ii) not less than one Director and not more than two Directors must, in the opinion of the Directors, be from an organisation engaged in the provision of resources (eg advocacy, support, funding, research, advice etc) for the benefit of Artists, including one Indigenous visual arts peak organisation with a remote/regional focus; and
 - (iii) not less than one Director and not more than eight Directors must, in the opinion of the Directors, be from a legal, business or consumer background; or a person with such other skills as the Directors consider necessary or appropriate.
- (b) Board-Appointed Directors will be appointed as follows:
 - (i) The Directors may, if they deem it desirable to do so, advertise for nominations of individuals to be appointed as Directors.
 - (ii) Any nominations for appointment as Director must:
 - (A) be in writing and provided to the Directors within any time period (if any) that the Directors have specified;
 - (B) be accompanied by the individual's consent to be appointed as a Director; and
 - (C) state which category set out in Rule 11.3(a) the individual is nominating for.
 - (iii) The Directors must consider any nominations received and appoint persons having regard to the requirements of Rule 11.3(a).
 - (iv) A person is appointed as a Director upon receiving written notice from the Directors of his or her appointment as a Director (including the category set out in Rule 11.3(a) to which the Director belongs) and the term of that appointment.

11.4 Term of appointment as Directors

- (a) A Dealer Director in the category set out in Rule 11.2(a)(i) or (iv) must retire from office at the conclusion of the first annual general meeting after the Director was appointed or last elected but shall be eligible for re-election.
- (b) A Dealer Director in the category set out in Rule 11.2(a)(ii) or (iii) must retire from office at the conclusion of the third annual general meeting after the Director was appointed or last elected but shall be eligible for re-election.

- (c) A Board-Appointed Director will hold office for the period agreed by the Directors and notified to the Board-Appointed Director at the time of appointment. A Board-Appointed Director is eligible for re-appointment.

11.5 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) being a Member at the time of their appointment as a Director, ceases to be a Member;
- (c) being an authorised representative of an organisation that is a Member at the time of their appointment as a Director, ceases to be an authorised representative of that organisation or the organisation ceases to be a Member;
- (d) resigns from the office of Director by notice in writing to the Company;
- (e) is not re-elected or re-appointed at the conclusion of their term of office;
- (f) is absent without the consent of the Directors from meetings of the Directors held during a continuous period of six months; or
- (g) dies.

11.6 Alternate Director

- (a) A Dealer Director may appoint a person to be an alternate director in the Director's place if the Directors have approved the appointment.
- (b) A Board-Appointed Director may appoint a person to be an alternate director in the Director's place if the Directors have approved the appointment.
- (c) The following provisions apply to any alternate Director:
 - (i) the appointment of the alternate Director is terminated or suspended on receipt at the registered office of notice in writing from the Director by whom the alternate Director was appointed;
 - (ii) the alternate Director is entitled to receive notice of meetings of the Directors and to attend and vote at the meetings if the Director by whom the alternate Director was appointed is not present;
 - (iii) the alternate Director is entitled to exercise all the powers (except the power to appoint an alternate Director) and perform all the duties of a Director, to the extent the Director by whom the alternate Director was appointed has not exercised or performed them or they have not been limited by the instrument appointing the alternate Director; and
 - (iv) the office of the alternate Director is terminated on the death of, or termination of office by, the Director by whom the alternate Director was appointed.

12. Powers of Directors

The business of the Company will be managed by the Directors, who may exercise all powers of the Company which are not, by the Corporations Act or this Constitution, required to be exercised by the Company in general meeting.

13. Proceedings of Directors

13.1 Directors' meetings

The Directors may meet together for conducting business and may adjourn and otherwise regulate their meetings as they see fit.

13.2 Power to call for a Directors' meeting

A Director may at any time, and the Secretary must on the request of a Director, call a meeting of the Directors.

13.3 Quorum for Directors meetings

The number of Directors necessary to form a quorum at a meeting of the Directors is three Directors.

13.4 Notice

Reasonable notice must be given to every Director of the place, date and time of every meeting of the Directors. Notice of a meeting of the Directors may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the Directors or at any other address given to the Secretary by the Director or by any technology agreed to by all the Directors.

13.5 Directors' meetings by technology

(a) For the purposes of the Corporations Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Directors' meeting:

- (i) video conference;
- (ii) telephone;
- (iii) electronic mail;
- (iv) any other technology which permits each Director to communicate with every other Director; or
- (v) any combination of these technologies.

A Director may withdraw the consent given under this Rule in accordance with the Corporations Act and not otherwise.

(b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:

- (i) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Directors, taken to be assembled together at a meeting and to be present at that meeting; and
- (ii) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were physically present in one location.

13.6 Chair of Directors

- (a) Subject to Rule 13.6(d), the Directors may elect from their number a Chair or two co-Chairs and may decide the period for which the Chair or each co-Chair is to hold office.
- (b) Where a meeting of Directors is held and two co-Chairs have been elected as provided by paragraph (a), they shall act jointly as co-chairs of the meeting unless they otherwise agree.
- (c) Where a meeting of the Directors is held and:
 - (i) a Chair has not been elected as provided by paragraph (a); or
 - (ii) a Chair is not present within 15 minutes after the time appointed for the holding of the meeting or does not wish to chair the meeting,the Directors present may elect one of their number to be chair of the meeting.
- (d) If there are to be two Co-Chairs elected as provided by paragraph (a), at least one of the Co-Chairs must be an Indigenous person.

13.7 Directors' voting rights

- (a) Subject to this Constitution, questions arising at a meeting of the Directors are decided by a majority of votes of Directors present and voting.
- (b) Subject to Rule 13.9, a Director who has a material personal interest in a matter may vote in respect of that matter if it comes before the Directors and be counted as part of the quorum.

13.8 Conflict of interests

- (a) A Director is not disqualified from contracting with the Company in any capacity by reason of holding the office of Director.
- (b) In relation to a contract or arrangement in which a Director is in any way interested:
 - (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
 - (ii) the contract or arrangement may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and

- (iii) the Director will not be liable to account to the Company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.

13.9 Material personal interest

- (a) Subject to paragraph (b), a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of his or her interest in accordance with the Corporations Act.
- (b) A Director with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:
 - (i) if all of the following conditions are met:
 - (A) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
 - (B) if a person who was not a Director at the time the notice was given is appointed as a Director, the notice is given to that person; and
 - (C) the nature or extent of the interest has not materially increased above that disclosed in the notice;
 - (ii) if the Director has given a standing notice of the nature and extent of the interest in accordance with the Corporations Act and that standing notice is still effective in relation to the interest; or
 - (iii) as otherwise permitted under the Corporations Act.
- (c) A Director who has a material personal interest in a matter that is being considered at a meeting of the Directors must not be present while the matter is being considered at the meeting or vote on the matter, except as permitted in accordance with the Corporations Act.
- (d) Nothing in this Rule affects the duty of a Director:
 - (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as a Director, to declare at a meeting of the Directors, the fact and the nature, character and extent of the conflict; or
 - (ii) to comply with the Corporations Act or any other law.

13.10 Committees

- (a) The Directors may delegate any of their powers to committees consisting of any one or more Directors or any other person or persons as the Directors think fit and may revoke that delegation.
- (b) A committee to which any powers have been delegated under paragraph (a) must exercise those powers in accordance with any directions of the Directors. These powers are then taken to have been exercised by the Directors.

- (c) Subject to paragraph (b), the meetings and proceedings of any committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Directors so far as they are applicable.
- (d) Nothing in this Rule 13.10 limits the power of the Directors to delegate.

13.11 Written resolutions

- (a) A resolution in writing of which notice has been given to all Directors and which is signed by a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Directors) is a valid resolution of the Directors and is effective when signed by the last of the Directors constituting the majority, as required.
- (b) For the purpose of this Rule, the references to Directors include any alternate Director appointed by a Director who is not available to sign the document or is otherwise unable to sign the document within a reasonable time but do not include any other alternate Director.
- (c) The resolution may consist of several documents in the same form each signed by one or more of the Directors. A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered a document in writing signed by the Director and is deemed to be signed when received in legible form.

13.12 Defects in appointments

- (a) All acts done by any meeting of the Directors or person acting as a Director are as valid as if each person was duly appointed and qualified to be a Director or a member of a committee.
- (b) Paragraph (a) applies even if it is afterwards discovered that there was some defect in the appointment of a person to be a Director or to act as a Director or that a person so appointed was disqualified.

13.13 If less than minimum number of Directors

If the number of Directors is reduced below the minimum number fixed by this Constitution, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Company but for no other purpose.

14. Officers of the Company

14.1 Powers, duties and authorities of Secretary

A Secretary of the Company holds office on the terms and conditions, and with the powers, duties and authorities, as the Directors decide.

14.2 Termination of appointment of Secretary

The Directors may at any time terminate the appointment of a Secretary.

14.3 Appointment of other officers

The Directors may from time to time:

- (a) create any other position or positions in the Company with the powers and responsibilities as the Directors may from time to time decide; and
- (b) appoint any person, whether or not a Director, to any position or positions created under paragraph (a).

14.4 Termination of appointment of other officers

The Directors may at any time terminate the appointment of a person holding a position created under Rule 14.3(a) and may abolish the position.

15. Seals

The Company may have a common seal and a duplicate common seal which are to be used by the Company as determined by the Directors.

16. Notices

16.1 Notices generally

Any Member who has not left at or sent to the registered office, a place of address or an electronic mail address (for registration in the register) at or to which all notices and documents of the Company may be served or sent is not entitled to receive any notice.

16.2 How notice may be given

The Company may give notice to a Member, in its discretion, by:

- (a) serving it on the Member personally;
- (b) sending it by post to or leaving it at the Member's address as shown in the register of Members or an alternative address supplied by the Member;
- (c) sending it to the fax number or electronic mail address supplied by the Member; or
- (d) serving it in any manner contemplated in this Rule 16.2 on a Member's attorney as specified by the Member under a notice given under Rule 16.3.

16.3 Notices to an attorney

By written notice to the Secretary left at or sent to the registered office, a Member may request that all notices to be given by the Company or the Directors be served on the Member's attorney at an address specified in the notice and the Company may do so in its discretion.

16.4 Personal service or delivery

A notice served on a Member personally or left at the Member's address is considered to have been served when delivered.

16.5 Notice by post

A notice sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is considered to have been served at the expiration of 24 hours after the notice is posted, provided that it is properly addressed.

16.6 Notice by fax or electronic mail

Any notice sent by fax or electronic mail is considered to have been served on the day it is sent, provided that it is properly addressed.

17. Winding Up or Revocation of Endorsement of the Company

17.1 Winding up or revocation of endorsement

On the earlier of, the winding up or dissolution of the Company and if the Company is endorsed as a Deductible Gift Recipient the revocation of that endorsement, any property whatsoever (including any property in the Public Gift Fund established under Rule 4.1), that remains, after satisfaction of all debts and liabilities, must not be paid to or distributed among the Members but must be given or transferred to:

- (a) one or more organisations selected by the Members at or before the time of dissolution or revocation of endorsement:
 - (i) having objects similar to the objects of the Company set out in Rule 3; and
 - (ii) gifts to which can be deducted under Sub-Division 30-B, section 30-100 of the Tax Act; and
 - (iii) which by its Constitution is required to apply its profits (if any) or other income in promoting its objects and is prohibited from distributing its income and property to its members.
- (b) if there is no institution that meets the requirements of Rule 17.1(a), the property must be paid or distributed to one or more other institutions, associations or bodies (whether or not a Member or Members) selected by the Members at or before the dissolution of the Company, the objects of which are the promotion of charity and Gifts to which are allowable deductions under the Tax Act; or
- (c) if the Members do not make a selection pursuant to paragraphs (a) or (b) for any reason, to one or more institutions, associations or bodies meeting the requirements of paragraphs (a) or (b), as selected by the Directors.

17.2 Amalgamation

Where it furthers the objects of the Company to amalgamate with any one or more other organisations having similar objects to the objects of the Company, the other organisation or organisations must have rules prohibiting the distribution of its income and property to Members.

18. Indemnity and Insurance

- (a) The Company indemnifies each officer of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer.
- (b) Where the Directors consider it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company, provided that such terms are not inconsistent with this Rule 18.
- (c) Where the Directors consider it appropriate, the Company may:
 - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer; and
 - (ii) bind itself in any contract or deed with any officer of the Company to make the payments.
- (d) In this Rule 18:
 - (i) **officer** means a director or secretary, and includes a former officer.
 - (ii) **duties of the officer** includes, in any particular case where the Directors consider it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company to any other corporation.
 - (iii) to the relevant extent means:
 - (A) to the extent the Company is not precluded by law from doing so;
 - (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
 - (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.
 - (iv) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

Schedule 1

Inaugural Directors

Chair

Ron Merkel

Deputy Chair

Richard England

Directors

The persons named in the following table are the Inaugural Directors.

Paragraph	Name of Director	Classification
(a)	Beverly Joy Waldegrave-Knight	Dealer Director
(b)	Ian Plunkett;	Dealer Director
(c)	Martin John Wardrop	Dealer Director
(d)	Cecilia Carmen Alfonso	Dealer Director
(e)	Julie Gough	Artist Director
(f)	Billy Missi	Artist Director
(g)	Richard Anthony Fountayne England	Business / legal / consumer representative
(h)	Ronald Merkel	Business / legal / consumer representative
(i)	John Arthur Oster	Artist resource organisation representative
(j)	Elizabeth Jean Tregenza	Artist resource organisation representative