

Constitution

**Community Broadcasting Association of Australia Limited
ABN 92 003 108 030**

A company limited by guarantee and not having share capital

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Constitution

Community Broadcasting Association of Australia Limited
ABN 92 003 108 030 (Company)

1 INTERPRETATION

1.1 Definitions

In this Constitution unless the context otherwise requires:

ACN means Australian Company Number.

ACNC means the Australian Charities and Not-for-Profits Commission.

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

ACNC Regulation means the *Australian Charities and Not-for-Profits Commission Regulation 2013*.

Appointed Director means a person appointed as a Director pursuant to **clause 19.5**.

Arts Minister has the meaning given to it in the *Income Tax Assessment Act 1997* (Cth).

Arts Secretary has the meaning given to it in the *Income Tax Assessment Act 1997*(Cth).

ASIC means the Australian Securities & Investments Commission or any successor body.

Aspirant Community Broadcaster Member has the meaning given in **clause 6.1(a)(iii)**.

Board means the board of Directors, constituted in accordance with **clause 19.1**.

Broadcasting Services Act means the *Broadcasting Services Act 1992* (Cth).

By-Laws means the by-laws adopted and amended by the Board from time to time in accordance with **clause 28**.

Charity means an entity that is registered with the ACNC.

Chief Executive Officer means the person appointed to perform the duties of 'Chief Executive Officer' of the Company.

Company means Community Broadcasting Association of Australia Limited.

Constitution means this document and includes any variation or replacement of it.

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

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

DGR means deductible gift recipient.

Director means a person elected as a director of the Company (and includes both Appointed Directors and Member Elected Directors).

Direct Vote means a valid notice of a Voting Member's voting intention, made pursuant to **clause 16**.

Life Member has the meaning given in **clause 6.1(a)(iv)**.

Member means a Permanent Community Broadcaster Member, Temporary Community Broadcaster Member, Aspirant Community Broadcaster Member or Life Member, as the case may be.

Member Elected Director means a person elected as a Director pursuant to **clause 19.4**.

Member's Guarantee Amount means the amount referred to in **clause 40.1**.

Membership means membership of the Company as a Member.

Office means the registered office of the Company.

Office Bearer means a person holding any of the offices specified in **clause 19.7(a)**.

Permanent Community Broadcaster Member has the meaning given in **clause 6.1(a)(i)**.

President means the President of the Company, elected pursuant to **clause 19.7(a)(i)**.

Public Fund means the fund established and maintained by the Company pursuant to **clause 34** and listed on the Register of Cultural Organisations.

Register means the register of Members to be kept pursuant to the Corporations Act.

Register of Cultural Organisations means the Australian Government's Register of Cultural Organisations established under Subdivision 30-F of the *Income Tax Assessment Act 1997* (Cth).

Replaceable Rules means the replaceable rules under, or as referred to in, the Corporations Act.

Representative means a person authorised in accordance with section 250D of the Act to act as a representative of a body corporate, as described in **clause 16**.

Secretary means any person appointed to perform the duties of 'Secretary' of the Company.

Special Resolution has the meaning given in the Corporations Act.

Temporary Community Broadcaster Member has the meaning given in **clause 6.1(a)(ii)**.

Vice-President means the Vice-President of the Company, elected pursuant to **clause 19.7(a)(ii)**.

Voting Members means Permanent Community Broadcaster Members and Temporary Community Broadcaster Members. For the avoidance of doubt, Aspirant Community Broadcaster Members and Life Members are not Voting Members.

1.2 Interpretation

In this Constitution:

- (a) words importing the singular number include the plural number and vice versa;
- (b) words referring to a person includes corporations and other entities;
- (c) where a word or an expression is defined, another part of speech or grammatical form of that word or expression has a corresponding meaning;
- (d) any reference to a clause is a reference to a clause of this Constitution;
- (e) headings to clauses are added for convenience only and do not affect interpretation;
- (f) an expression used in this Constitution that is defined in the Corporations Act has the same meaning in this Constitution unless the context otherwise requires;
- (g) an expression used in this Constitution that is defined in the Broadcasting Services Act has the same meaning in this Constitution unless the context otherwise requires;
- (h) a reference to any legislation, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it;
- (i) **includes** means includes without limitation; and
- (j) **writing** or **written** includes printing, lithography, photography and other modes of reproducing or representing words in a visible form.

1.3 Replaceable Rules

The Replaceable Rules do not apply in respect of the Company, except when they are expressly stated to apply.

1.4 Determining percentage of votes

Where a clause of this Constitution requires the percentage of votes a Member has to be worked out, that percentage must be worked out as at midnight before the relevant event.

1.5 Written notice

Written notice includes notice given by way of:

- (a) facsimile; and
- (b) electronic transmission.

2 PUBLIC COMPANY LIMITED BY GUARANTEE

The Company is a public company limited by guarantee and does not have share capital.

3 OBJECTS OF THE COMPANY

3.1 The Company is a cultural organisation established for the promotion of community broadcasting, including both radio and television. The Company will achieve this Object by:

- (a) supporting the development of community broadcasting in Australia;
- (b) promoting community participation in radio and television by:
 - (i) supporting the principle that community broadcasting should be controlled and operated at a local level by autonomous bodies; and
 - (ii) promoting the principles of independence in programming, diversity of output, access to broadcasting by the community, the widest representation of viewpoints to give the fullest expression to the aspirations and culture of the Australian people, diversity in the organisation and structure of broadcasting and co-operation between community broadcasters; and
- (c) promoting community radio and television, by supporting community broadcasters in the following ways:
 - (i) providing a range of services to Members and other relevant organisations including information, legal, financial, technical, programming and staff training services;
 - (ii) co-ordinating on a national level the efforts of Members and other relevant organisations having similar aims and objects;
 - (iii) undertaking research on behalf of the community broadcasting sector;
 - (iv) providing infrastructure and technology support services to the community broadcasting sector including transmission and content delivery infrastructure;
 - (v) representing Members both nationally and internationally to government and other bodies;

- (d) enabling the promotion of the various arts which are promoted through community radio and television including music, performing arts, community art, film, visual arts and Aboriginal art;
 - (e) encouraging the promotion and distribution of Australian music through The Australian Music Radio Airplay Project (AMRAP) or any similar project;
 - (f) promoting the creation and distribution of radio programmes through the Community Radio Network, including news, talk, music and entertainment programmes; and
 - (g) anything ancillary to the Objects referred to in **clauses 3.1(a) to 3.1(f)**.
- 3.2 The Company can only exercise the powers in section 124(1) of the Corporations Act to:
- (a) carry out the Objects of the Company; and
 - (b) do all things incidental or convenient in relation to the exercise of power under **clause 3.2(a)**.

4 POWERS OF THE COMPANY

4.1 Execution of documents by the Company

- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:
 - (i) two (2) Directors signing the same; or
 - (ii) a Director and a Secretary signing the same.
- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

5 INCOME AND PROPERTY OF THE COMPANY

5.1 Income and property to be applied towards objects

All income and property of the Company must be solely applied towards the promotion of the objects of the Company as set out in **clause 3**.

5.2 No payments to Members

Subject to **clause 5.3**, no part of the income or property of the Company may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to the Members of the Company.

5.3 **Payments in good faith**

Nothing in this Constitution prevents the Company from making payment in good faith to a member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
- (b) of reasonable interest not exceeding current bank overdraft rates of interest on any money lent to the Company by any Member; or
- (c) of reasonable or proper rent for premises let by any Member to the Company.

6 **APPLICATION FOR MEMBERSHIP**

6.1 **Eligibility for Membership**

- (a) The membership of the Company is comprised of the following categories:

- (i) **Permanent Community Broadcaster Members**

Permanent Community Broadcaster Members:

- (A) are any not-for-profit entity which, as determined by the Board supports the objects specified in **clause 3** of this Constitution, complies with the relevant Codes of Practice;
- (B) hold a licence to operate a community broadcasting service under Part 6 of the Broadcasting Services Act; and
- (C) shall be entitled to vote.

- (ii) **Temporary Community Broadcaster Members**

Temporary Community Broadcaster Members:

- (A) are any not-for-profit entity which, as determined by the Board, supports the objects specified in **clause 3** of this Constitution, complies with the relevant Codes of Practice;
- (B) hold a temporary community broadcasting licence under Part 6A of the Broadcasting Services Act; and
- (C) shall be entitled to vote.

- (iii) **Aspirant Community Broadcaster Members**

Aspirant Community Broadcaster Members:

- (A) are any not-for-profit entity which, as determined by the Board, supports the objects specified in **clause 3** of this Constitution, agrees to comply with the relevant Codes of Practice;

- (B) intend in good faith to apply to hold a licence to operate a community broadcasting service under Part 6 of the Broadcasting Services Act;
- (C) in the Board's opinion, will be able to meet the licensing requirements under the Broadcasting Services Act; and
- (D) shall not be entitled to vote.

(iv) **Life Members**

Life Members:

- (A) are any persons admitted to the Membership pursuant to **clause 6.2**; and
 - (B) shall not be entitled to vote.
- (b) The Board may determine, from time to time, to create new non-voting categories of Membership and the criteria attached to such categories.
- (c) Membership is not open to political parties or entities operated for profit or as part of a profit-making enterprise. The Board reserves the right to refuse an application for Membership at its discretion.

6.2 **Appointment of Life Members**

The Company may by resolution at a general meeting admit such persons as are approved by resolution of the Board to be Life Members.

6.3 **Membership Application process**

- (a) An applicant for Membership must apply in writing in the manner prescribed by the Company from time to time.
- (b) An applicant for Permanent Community Broadcaster Membership, Temporary Community Broadcaster Membership or Aspirant Community Broadcaster Membership must provide the Company with:
 - (i) copies of their constitution, rules, memorandum and articles of association (if any) of the applicant;
 - (ii) the most recent financial statements and reports of the applicant;
 - (iii) such other information and data concerning the applicant or its application as the Board considers necessary; and
 - (iv) an undertaking to be bound by the provisions of this Constitution in such form as may be prescribed by the Company.
- (c) An applicant for Permanent Community Broadcaster Membership or Temporary Community Broadcaster Membership must also provide the Company with such details relating to the applicant as may be requested by the Company, which may include:

- (i) the type of material intended to be broadcast;
- (ii) the type of service intended to be provided;
- (iii) the intended audience; and
- (d) the intended reception area. The Board will advise applicants of any information or data provided in support of an application for Membership, which it considers to be inconsistent with the objects specified in **clause 3** of this Constitution and may, if it considers appropriate, suggest such amendments as may be necessary to enable an application for Membership to be successful.

6.4 Admission as a Member

- (a) Subject to **clause 6.2**, the appropriate class of Membership will, in the case of each applicant, be determined by the Board which may admit that applicant to such class of Membership.
- (b) Upon an application for Membership being approved by the Board, the Company will notify the applicant in writing of the following:
 - (i) that the applicant has been approved for Membership; and
 - (ii) the class of Membership for which the applicant has been approved,and upon receipt of the sum payable by the applicant as its first annual Membership subscription, the Company will enter the applicant's name under the appropriate class of Membership in the Register and the applicant will become a Member.

7 MEMBERSHIP

7.1 Information to be provided by Permanent Community Broadcaster Members and Temporary Community Broadcaster Members

Each Permanent Community Broadcaster Member and Temporary Community Broadcaster Member must provide to the Company:

- (a) a copy of every amendment to its constitution, rules, memorandum and articles of association (if any) within 21 days of the making of any such amendment;
- (b) the names of its office-bearers, committee or council members, directors and principal employees within 21 days of the appointment of any such persons;
- (c) a copy of every annual report or similar document (if any) published by it after the date of its admission to Membership within 21 days of the publication of any such report or similar document;
- (d) such copies of programmes and programme schedules (if any) as the Board considers necessary for the effective functioning of the Company; and

- (e) any other information which the Board considers necessary in the interests of the Company and the Members.

7.2 Exception to admission process

Notwithstanding any other provision of this Constitution, a general meeting may by resolution carried by a majority of not less than two-thirds of those Members present admit any person otherwise ineligible for Permanent Community Broadcaster Membership, Temporary Community Broadcaster Membership or Aspirant Community Broadcaster Membership to any class of Membership for a period not exceeding 15 months or until the next annual general meeting of the Company whichever occurs first. Any such Membership will be renewable for a further period or periods not exceeding 15 months or until the next ensuing annual general meeting of the Company whichever occurs first by like resolutions of subsequent general meetings of the Company.

7.3 Resignation from Membership

- (a) A Member (other than a Permanent Community Broadcaster Member) may at any time resign from the Company by notice in writing addressed to the Secretary. Upon receipt of such notice the Company will remove the name of the Member from the Register and that Member will cease to be a Member.
- (b) A Permanent Community Broadcaster Member must give to the Company not less than 3 months' notice in writing of its intention to resign from the Company.

7.4 Membership rights and obligations

- (a) A right, privilege or obligation of a Member:
 - (i) is not capable of being transferred or transmitted in any way; and
 - (ii) terminates upon the Member's cessation of Membership whether by death, resignation or otherwise.
- (b) All Members are entitled to the benefits and services provided by the Company and to receive copies of any reports and publications made or issued by the Company.

8 EXPULSION OF MEMBERS

8.1 Conduct detrimental to the interests of the Company

The Board, or the Company at a general meeting at which 75 percent of Voting Members present vote in favour of the resolution, may expel a Member from the Company if, as determined by the Board or the Company at a general meeting, the Member has engaged in conduct detrimental to the interests of the Company or breaches the constitution.

8.2 Expulsion process

- (a) The expulsion of a Member under **clause 8.1** will not take effect until the later of:
 - (i) the expiration of 21 days after the service on the Member of a notice under **clause 8.2(b)**; or
 - (ii) if the Member exercises its right of appeal under **clause 8.2(c)**, the conclusion of the general meeting at which the appeal is heard.
- (b) Where the Board or the Company expels a Member from the Company in accordance with **clause 8.1**, the Company will serve on the Member a notice in writing:
 - (i) stating that the Board or the Company has expelled the Member;
 - (ii) specifying the grounds for the expulsion; and
 - (iii) advising that the Member may appeal against the expulsion in accordance with this Constitution.
- (c) A Member on whom an expulsion notice under **clause 8.2(b)** is served may appeal against the expulsion by notifying the Company within 21 days of the expulsion notice.
- (d) Upon receipt of a notice under **clause 8.2(c)**, the Board will include the matter of the appeal on the agenda of matters to be considered at the next general meeting of the Company.
- (e) At the general meeting at which an appeal against an expulsion is to be heard:
 - (i) the Board may place before the meeting details of the reasons for the expulsion;
 - (ii) the expelled Member will be given a reasonable opportunity to be heard;
 - (iii) the Voting Members present will vote by secret ballot on whether the expulsion should be confirmed; and
 - (iv) no resolution confirming an expulsion will be effective unless passed by a majority of not less than 75% of the Voting Members present at the meeting.
- (f) If at the general meeting the resolution confirming the expulsion is not passed by the requisite majority, the Member is entitled to continue as a Member.
- (g) If at the general meeting the resolution confirming the expulsion is passed by the requisite majority, the expulsion will take immediate effect and the Member will immediately cease to be a Member.

- (h) A resolution by a general meeting of the Company for the expulsion of a Member and an appeal to a general meeting by a Member against expulsion either by the Board or by a general meeting will be special business.

8.3 Rights of expelled Members

- (a) A Member that has been expelled may re-apply for Membership upon the later of:
 - (i) twelve (12) months from the date of expulsion; or
 - (ii) the hearing of any appeal relating to the expulsion.
- (b) A Voting Member that has been expelled but has lodged an appeal against such expulsion will not be eligible to vote at general meetings of the Company pending the determination of that appeal.

9 SUBSCRIPTIONS AND LEVIES

9.1 Annual subscription fees

- (a) Each Member must pay the annual subscription fees corresponding to the Membership category of the Member, in such amount and in such manner as determined by the Board from time to time
- (b) The annual subscription fees are due and payable on or before the first day of the financial year of the Company. On application by a Member, the Board may resolve to allow the Member to pay the annual subscription fees in instalments the first becoming due and payable on the first day of the financial year of the Company.

9.2 Levies

The Board may, with the approval of two-thirds of Members thereon, impose a levy on Membership. Where a levy is approved, the Board will specify the date on which the levy is due and payable.

9.3 Payment default

- (a) Where a Member fails to pay an amount due and payable to the Company, the matter will be dealt with in accordance with the Company's debt recovery policy, and at the discretion of the Board. The Company's debt recovery policy may make reference to the Membership status of Members with outstanding debts. This may include that a Member will cease to be a Member if it fails to pay an amount due and payable to the Company.

- (b) The following process will apply to a Member that ceases to be a Member pursuant to **clause 9.3(a)**:
 - (i) the Company will notify the Member in writing of the Board's decision to terminate the Membership of the Member;
 - (ii) the Member may appeal to the Board within 21 days of notification of the Board's decision, setting out in full the Member's grounds of appeal;
 - (iii) as soon as practicable after receipt of a Member's notice of appeal, the Company will refer the same for determination by the Board;
 - (iv) the Board will make its determination at the next meeting of the Board following the receipt of the notice of appeal; and
 - (v) the Board will notify the Member in writing of its determination.

10 CIRCULATING RESOLUTIONS OF MEMBERS

- 10.1 Except in the case of a resolution under section 329 of the Corporations Act to remove an auditor, or any other resolution which the Corporations Act or this Constitution requires to be passed at a general meeting, the Company may pass a resolution without a general meeting being held if all the Voting Members sign a document containing a statement that they are in favour of the resolution set out in the document.
- 10.2 Separate copies of a document may be used for signing by Voting Members if the wording of the resolution and statement is identical in each copy.
- 10.3 The resolution is passed when the last Voting Member signs the document.
- 10.4 This clause does not affect any rule of law relating to the assent of Voting Members not given at a general meeting.

11 CALLING MEETINGS OF MEMBERS

11.1 Calling of meetings of Members by a Director

A Director may call a meeting of the Members.

11.2 Calling of general meeting by Directors when requested by Voting Members

- (a) The Directors must call and arrange to hold a general meeting on the request of Voting Members with at least five (5) per cent of the votes that may be cast at the general meeting.
- (b) The request must:
 - (i) be in writing;
 - (ii) state any resolution to be proposed at the meeting;

- (iii) be signed by the Voting Members making the request; and
- (iv) be given to the Company.
- (c) Separate copies of a document setting out the request may be used for signing by Voting Members if the wording of the request is identical in each copy.
- (d) Subject to consent to shorter notice being given in accordance with the Corporations Act, the Directors must call the meeting within 21 days after the request is given to the Company. The meeting is to be held not later than two (2) months after the request is given to the Company.

11.3 Failure of Directors to call a general meeting

- (a) Voting Members with more than 50 per cent of the votes of all of the Voting Members who make a request under **clause 11.2** may call and arrange to hold a general meeting if the Directors do not do so within 21 days after the request is given to the Company.
- (b) The meeting must be called in the same way, so far as is possible, in which general meetings of the Company may be called. The meeting must be held not later than three (3) months after the request is given to the Company.
- (c) To call the meeting the Voting Members requesting the meeting may ask the Company for a copy of the Register. The Company must give the Voting Members a copy of the Register within seven (7) days after the request without charge.
- (d) The Company must pay the reasonable expenses the Voting Members incurred because the Directors failed to call and arrange the meeting.
- (e) The Company may recover the amount of the expenses from the Directors. However, a Director is not liable for the amount if they prove that they took all reasonable steps to cause the Directors to comply with **clause 11.2**. The Directors who are liable are jointly and individually liable for the amount. If a Director who is liable for the amount does not reimburse the Company, the Company must deduct the amount from any sum payable as fees to, or remuneration of, the Director.

11.4 Amount of notice of meetings

- (a) Subject to **clause 11.4(b)**, at least 21 days' notice must be given of a meeting of the Members.
- (b) The Company may call on shorter notice:
 - (i) an annual general meeting, if all the Voting Members entitled to attend and vote at the annual general meeting agree beforehand; and
 - (ii) any other general meeting, if Voting Members with at least 95 percent of the votes that may be cast at the meeting agree beforehand.

- (c) The Company cannot call an annual general meeting or other general meeting on shorter notice if it is a meeting of the kind referred to in **clause 11.4(d)**.
- (d) At least 21 days' notice must be given of a meeting of the Company at which a resolution will be moved to:
 - (i) remove an auditor under section 329 of the Corporations Act; or
 - (ii) remove a Director under **clause 21(g)** or appoint a Director in place of a Director removed under that clause.

11.5 Notice of meetings of Members to Members and Directors

- (a) Written notice of a meeting of the Members must be given individually to each Member and to each Director.
- (b) The Company may give the notice of meeting to a Member:
 - (i) by hand or sent by post to the address of the Member in the Register or the alternative address (if any) nominated by the Member;
 - (ii) by facsimile to the address (if any) nominated by the Member;
 - (iii) by email to the address (if any) nominated by the Member; or
 - (iv) by any other means permitted under the Corporations Act.
- (c) A notice of meeting is taken to be given:
 - (i) in the case of delivery by hand, when delivered;
 - (ii) in the case of delivery by post, on the fifth day after the date of posting;
 - (iii) in the case of delivery by fax, at the time shown on a transmission report by the machine from which the fax was sent which indicates that the fax communication was sent at that time, in its entirety and without error to the fax number of the recipient; and
 - (iv) in the case of delivery by email, when sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

11.6 Auditor entitled to notice and other communications

The Directors must give the Company's auditor, if any:

- (a) notice of a general meeting in the same way that a Member is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a Member is entitled to receive.

11.7 Contents of notice of meetings of Members

A notice of a meeting of the Members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the resolution; and
- (d) contain a statement setting out the following information:
 - (i) that the Voting Member has a right to appoint a proxy; and
 - (ii) that a Voting Member who is entitled to cast two (2) or more votes may appoint two (2) proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

11.8 Notice of adjourned meetings

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one (1) month or more.

11.9 Procedural irregularities

The accidental omission to give notice of a meeting or the non-receipt of notice by any person does not invalidate the proceedings at that meeting unless the court, on the application of the person concerned, a person entitled to attend the meeting or ASIC, declares the proceedings at the meeting to be void.

12 MEMBERS' RIGHTS TO PUT RESOLUTIONS AT GENERAL MEETINGS

12.1 Voting Members' resolutions

- (a) The following Members may give the Company notice of a resolution that they propose to move at a general meeting:
 - (i) Voting Members with at least five (5) per cent of the votes that may be cast on the resolution; or
 - (ii) at least 100 Voting Members.
- (b) The notice 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) Separate copies of a document setting out the notice may be used for signing by the relevant Members if the wording of the notice is identical in each copy.

12.2 Company giving notice of Voting Members' resolutions

- (a) If the Company has been given notice of a resolution under **clause 12.1**, the resolution is to be considered at the next general meeting that occurs more than two (2) months after the notice is given.
- (b) The Company must give all of its Members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (c) The Company is responsible for the cost of giving Members notice of the resolution if the Company receives the notice in time to send it out to Members with the notice of meeting.
- (d) The Voting Members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Company in giving Members notice of the resolution if the Company does not receive the Voting Members' notice in time to send it out with the notice of meeting. At a general meeting, the Company may resolve to meet the expenses itself.
- (e) The Company need not give notice of the resolution:
 - (i) if it is more than 1,000 words long or defamatory; or
 - (ii) if the Voting Members making the request are to bear the expenses of sending the notice out - unless the Voting Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

13 MEMBERS' STATEMENTS TO BE DISTRIBUTED

13.1 Grounds for statement

Voting Members may request the Company to give to all of its Members a statement provided by the Voting Members making the request about:

- (a) a resolution that is proposed to be moved at a general meeting; or
- (b) any other matter that may be properly considered at a general meeting.

13.2 Who may request

The request must be made by:

- (a) Voting Members with at least five (5) per cent of the vote that may be cast on the resolution; or
- (b) at least 100 Voting Members.

13.3 How request to be made

The request must be:

- (a) in writing;
- (b) signed by the Members making the request; and
- (c) given to the Company.

13.4 Copies for signing

Separate copies of a document setting out the request may be used for signing by the relevant Members if the wording of the request is identical in each copy.

13.5 Distribution of statement

After receiving the request, the Company must distribute to all of the Members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.

13.6 When Company bears cost

The Company is responsible for the cost of making the distribution if the Company receives the statement in time to send it out to Members with the notice of meeting.

13.7 When Voting Members bear cost

The Voting Members making the request are jointly and individually liable for the expenses reasonably incurred by the Company in making the distribution if the Company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the Company may resolve to meet the expenses itself.

13.8 When Company need not comply with request

The Company need not comply with the request:

- (a) if the statement is more than 1,000 words long or defamatory; or
- (b) if the Voting Members making the request are responsible for the expenses of the distribution - unless the Voting Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

14 HOLDING MEETINGS OF MEMBERS

14.1 Purpose

A meeting of Members must be held for a proper purpose.

14.2 Time and place for meetings of Members

A meeting of Members must be held at a reasonable time and must either be held at a reasonable place or otherwise via any form of technology which gives the Members as a whole a reasonable opportunity to be present and participate in the meeting.

14.3 Technology

The Company may hold a meeting of its Members virtually, or at two (2) or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

14.4 Quorum

- (a) No business may be transacted at any general meeting unless a quorum of Voting Members is present at the time when the meeting proceeds to business. A quorum is constituted by ten per cent of all Voting Members, provided that those Voting Members are from at least three (3) different States and Territories of Australia.

For the purposes of this clause and **clause 14.4(b)** "Voting Member" includes a person attending as a proxy or an entity's Representative if the entity is a Voting Member. If a person has appointed more than one (1) proxy or Representative, only one (1) of those proxies or Representative is to be counted in determining whether a quorum is constituted.

- (b) If within 15 minutes from the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors may determine, and if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the Voting Members present constitute a quorum.

14.5 Chairing meetings of Members

- (a) The President is to be the chair at every general meeting of the Company. If the President cannot or will not chair a general meeting, or is not present within 15 minutes after the time appointed for the holding of the meeting, the Directors present may elect one of their number to be the chair of the meeting but if they do not do so the Voting Members present must elect the chair of the meeting.
- (b) The chair must adjourn a meeting of the Members if the Voting Members present with a majority of votes at the meeting agree or direct that the chair must do so.

14.6 President's resolutions

The President may propose a resolution at a general meeting (other than a resolution of which the Corporations Act or this Constitution requires notice to be given) if the resolution has the support of 4 or more Voting Members unless 4 other Voting Members request that notice of the resolution be given.

14.7 Members' rights to move resolutions and speak at general meetings

At general meetings of the Company:

- (a) all Voting Members are entitled to move resolutions; and
- (b) all Members are entitled to speak.

14.8 Auditor's right to be heard at general meetings

- (a) The Company's auditor (if any) is entitled to attend any general meeting of the Company.
- (b) The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- (c) The auditor is entitled to be heard even if:
 - (i) the auditor retires at the meeting; or
 - (ii) the meeting passes a resolution to remove the auditor from office.
- (d) The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.

14.9 Adjourned meetings

- (a) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (b) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

14.10 Annual general meetings

(a) Holding of annual general meetings

The Company must hold an annual general meeting in accordance with the provisions of the Corporations Act pertaining to annual general meetings, notwithstanding section 111L of the Corporations Act.

(b) Business of annual general meeting

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 auditor's remuneration.

- (c) **Questions at annual general meetings**
 - (i) The chair of an annual general meeting must allow a reasonable opportunity for Members as a whole at the meeting to ask questions about or make comments on the management of the Company.
 - (ii) If the Company's auditor or their representative is at the meeting, the chair of the annual general meeting must allow a reasonable opportunity for questions to be asked and answered by the auditor in accordance with the Corporations Act.

15 VOTING AT MEMBERS' MEETINGS

15.1 Voting rights

At a general meeting of the Company:

- (a) Permanent Community Broadcasting Members are entitled to exercise two (2) votes each;
- (b) Temporary Community Broadcaster Members are entitled to exercise one (1) vote each;
- (c) Aspirant Community Broadcaster Members are not entitled to vote;
- (d) Life Members are not entitled to vote; and
- (e) in the case of an equality of votes, the chair of the meeting will be entitled to exercise a casting vote.

15.2 Objections to right to vote at a meeting of the Members

A challenge to a right to vote at a Members' meeting:

- (a) may only be made at the meeting; and
- (b) must be determined by the chair, whose decision is final.

15.3 Votes need not all be cast in the same way

On a poll, a person voting who is entitled to two (2) or more votes:

- (a) need not cast all their votes; and
- (b) may cast their votes in different ways.

15.4 How voting is carried out

- (a) A resolution put to the vote at a Members' meeting must be decided on a show of hands unless a poll is demanded.
- (b) On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour of or against the resolution.

- (c) Subject to this Constitution and the Corporations Act, resolutions of Members are to be decided by simple majority of votes cast in respect of the relevant resolution.

15.5 Matters on which a poll may be demanded

- (a) A poll may be demanded on any resolution proposed at a Members' meeting.
- (b) A demand for a poll may be withdrawn.

15.6 When a poll is effectively demanded

- (a) At a Members' meeting a poll may be demanded by:
 - (i) at least five (5) Voting Members;
 - (ii) Voting Members with at least five (5) per cent of the votes that may be cast on the resolution on a poll; or
 - (iii) the chair.
- (b) The poll may be demanded:
 - (i) before a vote is taken on the proposed resolution;
 - (ii) before the voting results on a show of hands on the proposed resolution are declared; or
 - (iii) immediately after the voting results on a show of hands on the proposed resolution are declared.

15.7 When and how polls must be taken

- (a) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- (b) A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- (c) The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

16 DIRECT VOTES

- (a) The Board will determine from time to time if Voting Members are entitled to vote by a Direct Vote on a matter or a resolution. If the Board has determined that Voting Members are entitled to vote by a Direct Vote, then the Voting Members must do so using the form prescribed by the Board from time to time, which may include electronic means.

- (b) If sent by post or facsimile, the Direct Vote must be signed by the Voting Member or by a duly authorised officer, attorney or Representative.
- (c) If sent by electronic transmission, the Direct Vote is to be taken to have been signed if it has been signed or authorised by the Voting Member in the manner approved by the Board.
- (d) The Direct Vote must be received by the Company before the time of the relevant general meeting in order to be valid.
- (e) A Direct Vote is valid if it contains the following information:
 - (i) the Voting Member's name and address, or any applicable identifying notations such as the Voting Member's identification number or similar approved by the Board or specified in the notice of meeting; and
 - (ii) the Voting Member's voting intention on any or all of the resolutions to be put before the meeting.
- (f) A Direct Vote is valid unless the Company receives written notification changing the voting intention before the vote is cast.
- (g) The decision of the chair of a meeting as to whether a Direct Vote is valid is conclusive.
- (h) A Voting Member who has cast a Direct Vote is entitled to attend the meeting. The Member's attendance cancels the Direct Vote:
 - (i) unless the Voting Member instructs the Company otherwise; or
 - (ii) the Board has determined that Direct Votes are the only method permitted for voting on a resolution.
- (i) If a vote is taken at a meeting on a resolution on which a Direct Vote was cast, the chair of the meeting must:
 - (i) on a vote by show of hands, count each Voting Member who has submitted a Direct Vote for or against the resolution in accordance with their Direct Vote; and
 - (ii) on a poll, count the votes cast by each Voting Member who has submitted a Direct Vote directly for or against the resolution.

17 PROXIES AND REPRESENTATIVES

17.1 Who can appoint a Representative

At a general meeting of the Company:

- (a) each Permanent Community Broadcaster Member is entitled to be represented by two (2) Representatives;

- (b) each Temporary Community Broadcaster Member is entitled to be represented by one (1) Representative;
- (c) each Aspirant Community Broadcaster Member is entitled to be represented by one (1) Representative; and
- (d) Life Members are not entitled to a Representative.

17.2 Instrument appointing a Representative

The instrument appointing a Representative must be:

- (a) in writing in such form as the Board may approve from time to time; and
- (b) signed by the appointor or its attorney in accordance with the requirements (if any) of the Corporations Act and Corporations Regulations.

17.3 Role of Representatives

- (a) Any power or right of a Member as granted by this Constitution can be exercised by the Representative of that particular Member.
- (b) Members are represented at meetings of Members by their Representatives, subject to the right of a Representative to appoint a proxy pursuant to **clause 17.4**.
- (c) The actions of a Representative bind the Member which is represented by that particular Representative.
- (d) Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.

17.4 Who can appoint a proxy

Each Representative, or where a Voting Member does not have a Representative, each Voting Member, may appoint a person as the Representative's or Voting Member's proxy to attend and vote for the Representative or Voting Member at a meeting. A proxy need not be a Representative of a Voting Member.

17.5 Rights of proxies

A proxy appointed to attend and vote for a Representative or a Voting Member has the same rights as the Representative or Voting Member:

- (a) to speak at the meeting, except while the Representative or Voting Member is present;
- (b) to vote on a poll and on a show of hands (but only to the extent allowed by the appointment); and
- (c) to join in a demand for a poll.

17.6 Company sending appointment forms or lists of proxies must send to all Voting Members

If the Company sends a Voting Member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (a) if the Voting Member requested the form or list, the Company must send the form or list to all Voting Members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (b) otherwise, the Company must send the form or list to all its Members entitled to appoint a proxy to attend and vote at the meeting.

17.7 Appointing a proxy

- (a) An appointment of a proxy is valid if it is in writing in such form as the Board may approve from time to time and is signed, or otherwise authenticated in a manner prescribed by the Corporations Regulations, by the Voting Member making the appointment and contains the following information:
 - (i) the Voting Member's or Representative's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the meetings at which the appointment may be used if it is not a standing one.

An appointment may be a standing one.

- (b) Subject to **clause 17.3**, except with the prior written approval of the Board, no proxy may be a proxy for more than one Voting Member.
- (c) The chair of the Board may determine in its absolute discretion that a proxy is valid even if it does not contain all of the information referred to in **clause 17.7(a)**.
- (d) An undated appointment is taken to have been dated on the day it is given to the Company.
- (e) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
 - (i) Subject to **clause 17.7(e)(ii)**, the proxy must vote that way if the vote is taken on a show of hands;
 - (ii) if the proxy has two (2) or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
 - (iii) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and

- (iv) if the proxy is not the chair, the proxy must vote that way if the vote is taken on a poll.
- (f) If a proxy is also a Voting Member, this clause does not affect the way that the person can cast any votes they hold as a Voting Member.
- (g) An appointment does not have to be witnessed.
- (h) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

17.8 Proxy and Representative documents

- (a) For an appointment of a Representative or proxy for a meeting of Members to be effective, the following documents must be received by the Company before the meeting:
 - (i) the Representative's or proxy's appointment; and
 - (ii) if the appointment is signed or otherwise authenticated in a manner prescribed by the Corporations Regulations by the appointor's attorney, the authority under which the appointment was signed or authenticated or a certified copy of the authority.
- (b) If a meeting of Members has been adjourned, an appointment and any authority received by the Company before the resumption of the meeting are effective for the resumed part of the meeting.
- (c) The Company receives an appointment or an authority when it is received at any of the following:
 - (i) if received at least twenty-four (24) hours before the meeting:
 - (A) the Office;
 - (B) a fax number at the Office; or
 - (C) a place, fax number or electronic address specified for that purpose in the notice of meeting; or
 - (ii) if received within twenty-four (24) hours before the meeting, an electronic address specified for late appointments in the notice of meeting.
- (d) If the notice of meeting specifies other electronic means by which a Member may give the appointment or authority, then the appointment or authority will be received by the Company as prescribed by the Corporations Regulations.

17.9 Validity of proxy vote

- (a) A proxy who is not entitled to vote on a resolution as a Voting Member may vote as a proxy for another Voting Member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

- (b) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
 - (i) the appointing Voting Member dies;
 - (ii) the Voting Member is mentally incapacitated;
 - (iii) the Voting Member revokes the proxy's appointment; or
 - (iv) the Voting Member revokes the authority under which the proxy was appointed by a third party.

18 NATIONAL CONFERENCES

18.1 Conducting national conferences

- (a) The Board will arrange for a national conference to be conducted concurrently with the annual general meeting, whenever practicable.
- (b) The Board may arrange for national conferences to be conducted at its discretion but such conferences will be additional to and not in place of a national conference conducted in accordance with **clause 18.1(a)**.

18.2 Business of national conferences

- (a) The business of a national conference held in accordance with **clause 18.1(a)** will be:
 - (i) to resolve matters of community broadcasting policy and practice and give relevant directions to the Board;
 - (ii) to provide information and assistance to Members; and
 - (iii) to enable persons and organisations that are not Members to attend as observers to inform themselves about community broadcasting.
- (b) The business of a national conference will not include such matters as the organisation and management of the Company and the status or standing of Members.

18.3 Representation at national conferences

A Member may be represented at national conferences by Representatives duly appointed in accordance with this Constitution and to vote in plenary sessions of national conferences in accordance with the procedures established for general meetings by this Constitution.

18.4 Resolutions of national conferences

Resolutions of plenary sessions of national conferences have the same status as resolutions on matters of ordinary business in a general meeting provided that the amount of notice given is no less than the notice required by **clause 11.5**.

19 DIRECTORS

19.1 Number of Directors

- (a) The Board shall consist of not fewer than seven (7) and not more than nine (9) persons.
- (b) Subject to section 201P of the Corporations Act, the Board may by resolution vary the number of Directors from that referred to in **clause 19.1(a)**.

19.2 The Board

- (a) The Board will comprise:
 - (i) not fewer than seven (7) Member Elected Directors; and
 - (ii) up to two (2) Appointed Directors,provided that at all times a majority of Directors are Member Elected Directors who were nominated (under **clause 19.4(a)(i)** or **22(a)(i)**, as the case may be) by at least one (1) Permanent Community Broadcaster Member.
- (b) All Directors holding office from the adoption of this Constitution in 2022 shall be deemed to be Member Elected Directors.

19.3 Diversity of the Board

- (a) The Board will, so far as possible, be representative of:
 - (i) all States and Territories of Australia; and
 - (ii) different types of community broadcasting interests.
- (b) The Board may make By-Laws from time to time regarding any diversity requirements on the Board (which may be in addition to those in **clause 19.3(a)**).

19.4 Member Elected Directors

- (a) Nominations of candidates for election as Member Elected Directors must:
 - (i) be in writing signed by two (2) Voting Members and accompanied by the written consent of the candidate (which may be endorsed on the form of nomination); and
 - (ii) be delivered to the Secretary at least 28 days before the time fixed for the holding of the annual general meeting.
- (b) If:
 - (i) the number of nominations received is equal to the number of vacancies to be filled;

- (ii) there are insufficient nominations received to fill all vacancies on the Board; or
- (iii) the number of nominations received exceeds the number of vacancies to be filled,

a secret ballot will be held (which provides the option of leaving a position vacant). The ballot(s) will be conducted either at the annual general meeting, or another time determined by the Board, using the manner set out in the By-Laws from time to time. If the nominees are not elected or if there are vacancies to be filled, such vacancies will be filled by the Board pursuant to **clause 22(a)(i)**.

19.5 **Appointed Directors**

- (a) The Board may appoint Appointed Directors at any time to fill the positions provided for in **clause 19.2(a)(ii)**.
- (b) An Appointed Director may be, but need not be, a Member.

19.6 **Term**

- (a) Member Elected Directors shall hold office for a term of two (2) years, but shall be eligible for re-election for further terms of two (2) years each, subject to **clause 19.6(c)**.
- (b) Appointed Directors shall hold office for a term of up to two (2) years, but shall be eligible for re-appointment for further terms of up to two (2) years each, subject to **clause 19.6(c)**.
- (c) Directors shall not hold office for more than ten (10) consecutive years.
- (d) Once a Director has served the maximum term of ten (10) consecutive years, the Director is not eligible for re-election or reappointment to the Board until a period of at least two (2) years has passed since the expiry of the Director's previous term on the Board.
- (e) Subject to **clause 19.6(f)**, time spent on the Board before the adoption of this Constitution in 2022 shall not count towards the maximum consecutive term in **clause 19.6(c)**.
- (f) Directors who were elected to the Board in 2021, and are still holding office at the adoption of this Constitution in 2022, shall have one (1) further year in their term as a Director, and their year on the Board from 2021 to the adoption of this Constitution in 2022 shall count towards the maximum consecutive term in **clause 19.6(c)**.

19.7 **Office Bearers**

- (a) The Board shall, at the first meeting of the Board held after an Office Bearer position has become vacant, elect from among the Directors sitting on the Board at the time of the Board meeting:
 - (i) the President;

- (ii) the Vice-President; and
 - (iii) such other Office Bearer positions as the Board deems necessary from time to time.
- (b) The Office Bearers shall hold office for a term of one (1) year (subject to **clause 19.7(e)**), but shall be eligible for re-election for further terms of one (1) year each, subject to **clause 19.7(c)**, provided that Office Bearers shall not hold office beyond their retirement or removal from the Board as a Director.
- (c) An Office bearer shall not hold the same office for more than five (5) consecutive years.
- (d) The Director who was elected as President in 2021, if still holding office at the adoption of this Constitution in 2022, shall be entitled to serve as President for a further term of one (1) year, and shall be eligible for re-election for further terms of one (1) year each under **clause 19.7(b)**, subject to **clause 19.7(c)**.
- (e) The Director who was elected as Vice-President in 2022, shall be entitled to serve as Vice-President for a term of two (2) years, and shall be eligible for re-election for further terms of one (1) year each under **clause 19.7(b)**, subject to **clause 19.7(c)**.
- (f) Time spent as President by the Director referred to in **clause 19.7(d)** before the adoption of this Constitution in 2022 shall not count towards the maximum consecutive term in **clause 19.7(c)**.

20 GENERAL RIGHT TO APPOINT AND REMOVE DIRECTORS

The Board may act despite any vacancy in their body but if the number falls below the minimum fixed in accordance with **clause 19.1** the Board may act:

- (a) for the purpose of:
 - (i) increasing the number of Directors to the minimum; or
 - (ii) convening a general meeting; or
 - (b) in emergencies;
- but for no other purpose.

21 VACATION OF OFFICE

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

- (a) dies or becomes of unsound mind;
- (b) ceases to be a resident of Australia;

- (c) becomes prohibited from being a director of, or managing, a company by reason of any order made under the Corporations Act;
- (d) has been disqualified by the ACNC Commissioner at any time during the preceding twelve (12) months, from being a responsible entity of a registered entity under section 45.20(4) of the ACNC Regulation;
- (e) fails, without leave granted by the President, to attend two (2) consecutive meetings of the Board;
- (f) resigns by giving written notice to the Company at its Office; or
- (g) is removed from office in accordance with this Constitution or the Corporations Act or the ACNC Act.

22 CASUAL VACANCIES

- (a) In the event of a casual vacancy occurring on the Board under **clause 21**, the Board:
 - (i) in the case of a Member Elected Director, shall appoint a person to fill the vacancy; and
 - (ii) in the case of an Appointed Director, may appoint any person in accordance with **clause 19.5(a)**.
- (b) Any Director appointed pursuant to **clause 22(a)(i)** shall hold office for the remainder of the term of the vacating Member Elected Director, and time spent filling that vacancy shall not count towards the maximum consecutive term set out in **clause 19.6(c)**.
- (c) Any Director appointed pursuant to **clause 22(a)(ii)** shall hold office for a fresh new term, which term shall count towards the maximum consecutive term set out in **clause 19.6(c)**.

23 ACTING OFFICE BEARERS

- (a) In the event of a vacancy occurring in the position of President, the Vice-President shall assume office as acting President until the next meeting of the Board, at which time the Board shall elect a new President in accordance with **clause 19.7(a)(i)** for the balance of the term of the vacating President.
- (b) In the event of a vacancy occurring in the position of Vice-President, the Board at its next meeting shall appoint a Director who is not another Office Bearer to assume office as Vice-President for the balance of the term of the vacating Vice-President.
- (c) If any Office Bearer is temporarily absent or temporarily unable to perform his or her duties, the Board may authorise another Director to act in the vacant position during the absence or inability of the Office Bearer in an acting or temporary capacity.

- (d) Nothing in this **clause 23** permits any person to simultaneously hold more than one position of Office Bearer.

24 FINANCIAL BENEFITS

The Company must not provide financial benefits to a Director except as permitted by, and in accordance with, the provisions of the Corporations Act, the ACNC Act, the ACNC Regulations and any requirements imposed by the Department responsible for the administration of the Register of Cultural Organisations.

25 DEFECT IN APPOINTMENT

Notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director, or a member of a committee, or to act as a Director, or that a person so appointed was disqualified, all acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director are valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee.

26 INTERESTED DIRECTORS AND REMUNERATION

26.1 Disclosure of material interest

- (a) Any interest of a Director must be dealt with in accordance with the relevant legislation being the Corporations Act or the ACNC Act and the ACNC Regulation, which shall include disclosing an interest as soon as practicable after the relevant facts have come to that Director's knowledge and having the Secretary record all declarations in the minutes of the relevant meeting.
- (b) A Director's failure to make a disclosure under this **clause 26** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.

26.2 Voting by interested Directors

- (a) Subject to **clause 26.1(a)**, a Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board may:
 - (i) not be present while the matter is being considered at a meeting;
 - (ii) not vote on the matter;
 - (iii) still be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (iv) not sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (v) not vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

- (b) The Director may be present and vote if so entitled under a declaration or order made by ASIC under section 196 of the Corporations Act.

26.3 Remuneration of Directors

No payment shall be made to any Director other than the payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service; or
- (c) for any services rendered to the Company by the Director in their capacity as Director where the amount payable does not exceed the amount which has been determined by the Board and is not more than an amount which would be reasonable for a director of a not-for-profit company to receive for the services rendered.

27 POWERS AND DISCRETIONS OF DIRECTORS

27.1 Business of the Company

- (a) The business of the Company must be managed by or under the direction of the Directors who may exercise all the powers of the Company except any powers that the Corporations Act or this Constitution require to be exercised by the Company in general meeting.
- (b) No resolution made by the Company in general meeting invalidates any prior act of the Directors which would have been valid if the resolution had not been made.
- (c) Without in any manner limiting the generality of **clause 27.1(a)**, the Members agree that the Board has the power and authority, on behalf of Members, to negotiate, settle and agree with third parties, the terms and conditions upon which these third parties will grant the Members licences to broadcast and communicate in Australia.

27.2 Powers of the Directors

Without limiting **clause 27.1**, the Directors will have the following powers:

- (a) to engage employees and to fix terms of employment;
- (b) to engage consultants for appropriate fees;
- (c) to issue policy statements and publicity on behalf of the Company;
- (d) to publish material on behalf of the Company;

- (e) to invite any person to attend Board meetings for the purpose of observing or advising;
- (f) to advise Members on all aspects of broadcasting and applications for licences to broadcast;
- (g) to engage in negotiations with Federal, State and Territory governments of Australia and their departments and agencies;
- (h) to engage in negotiations with other broadcasting organisations within Australia and overseas;
- (i) to engage in negotiations with unions and industrial associations;
- (j) to seek financial and other support from Federal, State and Territory governments of Australia, their departments and agencies and other sources;
- (k) to make grants, when financial resources allow, to Permanent Community Broadcaster Members and Temporary Community Broadcaster Members for the purpose of planning, establishing and operating community broadcasting stations;
- (l) to investigate and initiate all appropriate actions to achieve the objects of the Company;
- (m) to approve or not approve persons nominated for Life Membership in accordance with **clause 6.2**.

27.3 Duties of Directors

- (a) Each Director is subject to, and must comply at all times with, the duties set out in Governance Standard 5 in section 45.25 of the ACNC Regulation.
- (b) In accordance with Governance Standard 4 in section 45.20 of the ACNC Regulation, the Board will take reasonable steps to ensure that the Board does not at any time include a Director who:
 - (i) is disqualified; or
 - (ii) has any reason to be disqualified;

from managing a corporation under the Corporations Act or from being a responsible entity under subsection 45.20(4) of the ACNC Regulation.

27.4 Appointment of attorneys

The Directors may by power of attorney appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors), for the period and subject to such conditions as the Directors think fit.

27.5 Directors may execute security over the assets of the Company

If the Directors or any of them or any other person becomes personally liable for the payment of any sum primarily due from the Company, the Directors may execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the Directors or persons so becoming liable from any loss in respect of such liability.

27.6 Negotiable instruments

All cheques, bills of exchange, promissory notes and other negotiable instruments will be signed, drawn, accepted, made or endorsed as the case may be for and on behalf of the Company in such manner as the Directors may from time to time determine.

27.7 Directors' discretion

Unless otherwise provided, if the Directors are given a power or discretion under this Constitution, subject to law they may exercise the power or discretion in any manner that they, in their absolute discretion, see fit.

28 BY-LAWS

- (a) The Board may from time to time make such By-Laws as are in its opinion necessary and desirable for the proper control, administration and management of the Company's affairs, operations, finances, interests, effects and property and to amend and repeal those By-Laws from time to time.
- (b) A By-Law must be subject to this Constitution and must not be inconsistent with any provision contained in this Constitution.
- (c) When in force, a By-Law is binding on all Members and has the same effect as this Constitution.
- (d) Subject to **clause 28(e)**, the Board will adopt such measures as it deems appropriate to bring to the notice of Members all By-Laws, amendments and repeals.
- (e) The Board will provide Members with reasonable notice of any proposed changes to the By-Laws regarding the eligibility requirements for Membership classes prior to the changes being implemented.

29 DELEGATION BY THE BOARD

29.1 Power to delegate

The Directors may delegate any of their powers to:

- (a) a committee of Directors;
- (b) a Director;

- (c) an employee of the Company; or
- (d) any other person.

29.2 Delegate to act in accordance with directions

The delegate must exercise the powers delegated in accordance with any directions of the Directors.

29.3 Effectiveness of exercise of delegate's power

The exercise of a power by a delegate is as effective as if the Directors had exercised it.

29.4 Meetings of sub-committees

- (a) The Board may at any time appoint working sub-committees from the Board on such terms as it thinks fit.
- (b) The Board may appoint as members of such sub-committees such persons with special expertise as it thinks fit whether or not those persons are Members, but a person so appointed is not entitled to vote at meetings of the sub-committee.
- (c) Each sub-committee will elect its own secretary who will, in conjunction with the Chief Executive Officer, be responsible for:
 - (i) the convening of all meetings of the sub-committee;
 - (ii) the keeping of all minutes and records of the sub-committee; and
 - (iii) informing and keeping informed the Chief Executive Officer of all matters relating to the sub-committee.
- (d) Two appointed members of a sub-committee will constitute a quorum at a meeting of a sub-committee.
- (e) The meetings and proceedings of a sub-committee must be carried out in accordance with the provisions in this Constitution relating to the meetings and proceedings of Directors, subject to any necessary changes and any directions made by the Directors.

29.5 Directors liable for delegate

If the Directors delegate a power under **clause 29.1**, a Director is responsible for the exercise of the power by the delegate as if the power had been exercised by the Directors themselves unless exonerated under section 190(2) of the Corporations Act.

30 PUBLIC FUND COMMITTEE

- (a) The Board shall form a Public Fund Committee consisting of such Directors and other persons so that the majority of those on the Public Fund Committee shall, by virtue of their tenure of some public office or their

professional standing, have an underlying community responsibility, as distinct from obligations solely with regard to the cultural objectives of the Company.

- (b) The Public Fund Committee shall have the power to administer the Public Fund in accordance with **clause 34**. The Public Fund Committee must in exercise of the powers delegated to it, conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- (c) The Public Fund Committee shall be chaired by a Director.
- (d) The meetings and proceedings of the Public Fund Committee will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- (e) A minute of all the proceedings and decisions of the Public Fund Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Corporations Act and this Constitution to be made entered and signed. A copy of these minutes shall be tabled at the next Board meeting.

31 DIRECTORS' RESOLUTIONS AND MEETINGS

31.1 Circulating resolutions

- (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) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director signs.

31.2 Calling Directors' meetings

A Directors' meeting may be called by a Director giving at least seven (7) days' notice individually to every other Director.

31.3 Use of technology

A Directors' meeting may be called or held by telephone, facsimile, electronic mail or by using any other technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

31.4 Location of Directors' meetings

The Directors will meet as they determine but will endeavour to meet in different geographical locations.

31.5 Chairing Directors' meetings

The Directors may elect a Director to chair their meetings and determine the period for which the chair is to hold office, but if no such chair is elected, or if at any meeting the chair is not present within 15 minutes after the time appointed for holding the meeting, the Directors may elect one of their number present to chair the meeting.

31.6 Quorum at Directors' meetings

- (a) A quorum for a meeting of the Board is constituted by three (3) Directors or one half of the total number of Directors, whichever is the greatest.
- (b) The quorum must be present at all times during the meeting.

31.7 Passing of Directors' resolutions

Questions arising at any Board meeting must be decided by a majority of votes. Each Director present at a Board meeting has one (1) vote. In the case of an equality of votes, the chair has a casting vote.

32 SECRETARY

32.1 Requirement for Secretary

The Company must have at least one (1) Secretary.

32.2 Appointment of Secretary

A Secretary must be appointed by the Directors.

32.3 Natural person not a minor as Secretary

A Secretary must be a natural person who has attained the age of 18 years.

32.4 Australian resident as Secretary

The Secretary, or one (1) of the Secretaries, if there are more than one (1), must be a person who ordinarily resides in Australia.

32.5 Acting Secretary

- (a) If there is no Secretary, or no Secretary is capable of acting, any act or thing required or authorised to be done by or in relation to the Secretary may be done by or in relation to any assistant or deputy Secretary.
- (b) If there is no assistant or deputy Secretary, or no assistant or deputy Secretary is capable of acting, by or in relation to any act or thing required or authorised to be done by, or in relation to, the Secretary, an officer authorised by the Directors to act as Secretary may do so, either generally or in relation to the doing of that act or thing.

32.6 Terms and conditions of office of Secretary

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors determine.
- (b) The Board may terminate or suspend any appointment of a person as a Secretary.

33 MINUTES

33.1 Company must keep minute books

The Company must keep minute books in which it records within one (1) month:

- (a) proceedings and resolutions of meetings of the Members;
- (b) proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);
- (c) resolutions passed by Members without a meeting; and
- (d) resolutions passed by Directors without a meeting.

33.2 Minutes to be signed

The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by either:

- (a) the chair of the meeting; or
- (b) the chair of the next meeting.

33.3 Resolution without meeting

The Company must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

33.4 Location of minute books

The Company must keep the minute books of the Company at:

- (a) the Office;
- (b) the Company's principal place of business in Australia; or
- (c) any other place approved by ASIC.

33.5 Inspection by Members

The Company must ensure that the minute books for the meetings of its Members and for resolutions of Members passed without meetings are open for inspection by Members free of charge.

33.6 Requests by Members

- (a) A Member may ask the Company in writing for a copy of:
 - (i) any minutes of a meeting of Members or an extract of the minutes; or
 - (ii) any minutes of a resolution passed by Members without a meeting.
- (b) If the Company does not require the Member to pay for the copy, the Company must send it within:
 - (i) 14 days after the Member asks for it; or
 - (ii) any longer period that ASIC approves.
- (c) If the Company requires payment for the copy, the Company must send it within:
 - (i) 14 days after the Company receives the payment; or
 - (ii) any longer period that ASIC approves.

34 PUBLIC FUND

- (a) The Company will establish and maintain a Public Fund.
- (b) The Company will invite members of the general public to deposit gifts into the Public Fund.
- (c) These monies will be kept separate from other funds of the Company and will only be used to further the Objects of the Company.
- (d) Investment of monies in the Public Fund will be made in accordance with guidelines for public funds as specified by the Australian Taxation Office.
- (e) The Public Fund will be administered by the Public Fund Committee formed by the Board pursuant to **clause 30**.
- (f) No monies in the Public Fund will be distributed to Members or Office Bearers of the Company, except as:
 - (i) reimbursement of out-of-pocket expenses incurred on behalf of the Public Fund; or
 - (ii) proper remuneration for administrative services.
- (g) The Company will notify the Department responsible for the administration of the Register of Cultural Organisations of any proposed amendments or alterations to this Constitution, to assess the effect of any amendments on the Public Fund's continuing DGR status.

- (h) Receipts for gifts to the Public Fund must include:
 - (i) the name of the Public Fund and that the receipt is for a gift made to the Public Fund;
 - (ii) the Australian Business Number of the Company;
 - (iii) the fact that the receipt is for a gift; and
 - (iv) any other matter required to be included on the receipt pursuant to the requirements of the Income Tax Assessment Act 1997 (Cth).
- (i) In the event of the Public Fund being wound up or dissolved, any surplus assets remaining after the payment of the Public Fund's liabilities shall not be paid to or distributed among Members, but shall be transferred to another fund, authority or institution:
 - (i) whose rules shall prohibit the distribution of its income among its members;
 - (ii) which has similar objects;
 - (iii) to which income tax deductible gifts can be made under subdivision 30-B, section 30-100 of the Income Tax Assessment Act 1997 (Cth); and
 - (iv) which is listed on the Register of Cultural Organisations.

35 INSPECTION OF BOOKS

The Directors may, but are not required to, authorise a Member to inspect the books of the Company.

36 INSPECTION OF ACCOUNTS

The Directors may determine whether and to what extent, and at what times and places, and under what conditions or regulations, the accounts and other records of the Company, or any of them, are to be opened to the inspection of Members not being Directors, and no Member (not being a Director) has any right of inspecting any account or book or paper of the Company, except as conferred by statute or authorised by the Directors.

37 REGISTER OF CULTURAL ORGANISATION REQUIREMENTS

In accordance with section 30-300 of the *Income Tax Assessment Act 1997* (Cth), the Company will:

- (a) comply with any rules that the Treasurer and the Arts Minister make to ensure that gifts made to the Public Fund are used only for the Company's principal purpose; and

- (b) give the Arts Secretary, at intervals of 6 months, statistical information about gifts made to the Public Fund during the last 6 months.

38 NOTICES

38.1 When notice is given

Where a specified period (including a particular number of days) must elapse or expire from or after the giving of a notice before an action may be taken, neither the day on which the notice is given or the day on which the action is to be taken may be counted in calculating the period.

38.2 Notice by Members of address for service

Each Member must notify the Company in writing of an address in Australia for service of notices. Subject to this Constitution and the Corporations Act, if the Member fails to do so, the Member is not entitled to any notice.

38.3 How notices are given

Subject to the Corporations Act and this Constitution, the Company may give notice and a person may give notice to the Company:

- (a) by hand or sent by post, to the last known address of the recipient;
- (b) by facsimile to the address (if any) nominated by the recipient;
- (c) by email to the address (if any) nominated by the recipient; or
- (d) by any other means consented to by the sender and the recipient.

38.4 When notices are taken to be given

Notices are taken to be given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, on the fifth day after the date of posting;
- (c) in the case of delivery by fax, at the time shown on a transmission report by the machine from which the fax was sent which indicates that the fax communication was sent at that time, in its entirety and without error to the fax number of the recipient; and
- (d) in the case of delivery by email, when sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

39 LIABILITY OF MEMBERS

The liability of the Members is limited.

40 WINDING UP

40.1 Subject to the winding up provisions contained in **clause 34(i)**, each Member undertakes to contribute to the assets of the Company if the Company is wound up during the time of a Member's membership or within one (1) year afterwards, in respect of the payment of:

- (a) debts and liabilities of the Company contracted before the Member's membership ceases;
- (b) costs, charges and expenses of the winding up of the Company; and
- (c) adjustment of the rights of the contributories amongst themselves,

for such amount as may be required but not exceeding 10 dollars.

40.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another institution or institutions which has:

- (a) objects which are similar to the Objects;
- (b) a constitution which requires its income and property to be applied in promoting its objects;
- (c) a constitution which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company by **clause 5**; and
- (d) which is endorsed as a DGR.

40.3 The identity of the institution or institutions referred to in **clause 40.2** is to be determined by the Members in writing at or before the time of dissolution, and failing such determination being made, by application to the Supreme Court of New South Wales for determination.

40.4 In the event that the Company ever has its endorsement as a DGR revoked, the Company must transfer all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions to another DGR, such DGR to be determined by the Board, or failing the Board, the Members, and failing such determination being made by either the Board or the Members, by application to the Supreme Court of New South Wales for determination.

41 INDEMNITY

41.1 Indemnity against proceedings

Subject to **clause 41.5**, every person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liabilities for costs and expenses incurred by that person:

- (a) in defending any proceedings relating to that person's position with the Company, whether civil or criminal, in which judgment is given in that

person's favour or in which that person is acquitted or which are withdrawn before judgment; or

- (b) in connection with any application in relation to any proceedings relating to that person's position with the Company, whether civil or criminal, in which relief is granted to that person under the Corporations Act by the court.

41.2 Indemnity against liabilities

Subject to **clause 41.5**, every person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liability incurred by the person as such a Director, Secretary or executive officer to another person (other than the Company or its related bodies corporate) unless the liability arises out of conduct involving a lack of good faith.

41.3 Insuring officers of the Company

The Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate against:

- (a) any liability incurred by that person as such a Director, Secretary or executive officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Corporations Act; and
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal and whatever the outcome provided the costs and expenses are not incurred for the reasons set out in section 199A(3) of the Corporations Act.

41.4 Company may make separate contracts and bring separate actions

- (a) The Company may confirm the indemnities in **clauses 41.1** and **41.2** by separate contract with, or on behalf of, one (1) or more of the persons indemnified.
- (b) The indemnities given by the Company in **clauses 41.1** and **41.2** do not affect the right of the Company to bring any demand or action against any Director, Secretary or executive officer of the Company or its related bodies corporate, including any demand or action arising out of the negligence of that person.

41.5 Directors may resolve to not indemnify

Provided the Company has not under **clause 41.4(a)** confirmed an indemnity by a contract which is in force, the Directors may resolve that the indemnities in **clauses 41.1** and **41.2** are not to apply to a specified person or class of persons.

41.6 Interpretation

Nothing in **clause 41.5** is to be taken to limit the power of the Company, as permitted by the Corporations Act, to indemnify or pay a premium for a contract insuring a person who is, or has been, an officer of the Company or its related bodies corporate.

41.7 Payments not remuneration

Any payment made by the Company under **clause 41** does not constitute remuneration for the purposes of this Constitution.

42 AMENDING THIS CONSTITUTION

42.1 Special Resolution

Subject to the Corporations Act, the Company may modify or repeal this Constitution or a provision of this Constitution by Special Resolution.

42.2 Date effective

A Special Resolution modifying or repealing this Constitution takes effect:

- (a) if no later date is specified in the resolution, on the date on which the resolution is passed; or
- (b) on a later date specified in or determined in accordance with the resolution.