

Constitution of Art Gallery Society
of New South Wales
(ACN 000 207 198)

(Adopted 19 October 2000, Amended 31 March 2004, 4 June 2008 and
5 April 2017)

The Corporations Law
A Public Company Limited by Guarantee incorporated in
New South Wales

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GENERAL

1. Definitions

The following definitions apply in this constitution unless the context otherwise requires.

ACNC Act means the *Australian Charities and Not-for-profits Commission 2013* (Cth) and the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth).

Corporate Member means any incorporated body or unincorporated association, including a body corporate as defined in the Law, admitted to membership of the Society in accordance with this constitution.

Council means the council of management of the Society and constitutes a board for the purposes of the Law. The Council consists of the Councillors.

Councillor means a person appointed to the Council in accordance with this constitution. A Councillor is a director for the purposes of the Law.

Determination means any determination made in accordance with clause 62 and any determinations already in existence.

Honorary Member has the meaning given to it by the Council from time to time.

Life Member has the meaning given to it by the Council from time to time.

Secretary/Treasurer means any person appointed to perform the duties of Secretary of the Society (and if applicable, the Treasurer) and includes a Secretary for the purposes of the Law.

Law means the *Corporations Act 2001* (Cth), the *Corporations Regulations 2001* (Cth) and the ACNC Act, as amended from time to time.

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

Period of Service means the period of approximately 12 months between each annual general meeting of the Society.

Prescribed Rate means the base rate charged by the Society's principal banker to corporate customers from time to time in respect of overdraft loans in excess of \$100,000 calculated on a daily basis and a year of 365 days.

registered charity means a charity registered under the ACNC Act.

Seal means any common seal or duplicate common seal of the Society.

Society means the Art Gallery Society of New South Wales, a public company limited by guarantee (ACN 000 207 198).

Term of Office means the period of time a Councillor has served as a Councillors since his or her last election or re-election to office.

2. Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) A gender includes all genders.
- (b) The singular includes the plural and conversely.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a paragraph or sub-paragraph is to a paragraph or sub-paragraph, as the case may be, of the clause or paragraph, respectively, in which the reference appears.
- (e) 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.
- (f) Division 10 of Part 1.2 of the Law applies in relation to this constitution as if they were an instrument made under the Law.
- (g) To the extent not prohibited by law, a reference to paper or documentation includes paper or documentation stored in an electronic form or reproduced from electronic recording or storage.
- (h) Except in so far as a contrary intention appears in this constitution, an expression has, in a provision of this constitution which relates to a particular provision of the Law, the same meaning as in that provision of the Law.
- (i) If the Society is not a registered charity (even if it remains a charity), the Corporations Act overrides any rule that is inconsistent with the Corporations Act.

3. Replaceable Rules

The replaceable rules contained in the Law do not apply to the Society.

4. Previous constitution superseded

This constitution supersedes the Memorandum and Articles of Association of the Society which were taken to be the Society's constitution in force immediately before the adoption of this constitution.

5. Transitional

Everything done under any previous constitution of the Society continues to have the same operation and effect after the adoption of this constitution as if properly done under this constitution. In particular:

- (a) every Councillor and Secretary in office immediately before adoption of this constitution is taken to have been appointed and shall continue in office under this constitution;
- (b) any Seal adopted by the Society before the adoption of this constitution is taken to be a Seal properly adopted under this constitution; and
- (c) any Determinations or by-laws in force under the previous constitution continue in force until amended or deleted by the Council.

6. Actions authorised under the Law and compliance with the Law

Where the Law authorises or permits a company to do any matter or thing if so authorised by its constitution, the Society is and will be taken by this clause to be authorised or permitted to do that matter or thing, despite any other provisions of this constitution.

OBJECTS

7. Objects

The objects for which the Society is established are:

- (a) to stimulate interest in and support for the significant cultural, educational and civic contributions made by the Art Gallery of New South Wales (***the Gallery***) and the Society;
- (b) to further continuing community awareness, access and appreciation of the art and art-related activities offered by both the Gallery and the Society;
- (c) to support materially the Gallery's growth and diversity, including the acquisition of works of art, through financial contributions and other forms of practical assistance;
- (d) to support the Gallery's day to day activities by training and making available a core of experienced and competent people;
- (e) to provide a continuing and cost efficient programme of quality art-related and other activities to Society members and others in ways that will also enhance the authority and standing of both the Gallery and the Society;

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- (f) to encourage a strong and vigorous membership of the Society through the active and ongoing recruitment of new members and, by providing existing members with a range of events, services, programmes and amenities that will maintain their interest and encourage loyalty and commitment to Society membership;
 - (g) to maintain an ongoing information programme about Society objectives, activities and aims through the Society's own medium and, where appropriate, through other forms of external publicity;
 - (h) to keep informed of members' attitudes and needs through research to ensure the delivery of the highest standard of service;
 - (i) to provide scholarships and other grants for the study of art and for professional development as the Society sees fit;
 - (j) to be financially prudent in the pursuit of objectives and to remain viable as an organisation through the profitable management of activities;
 - (k) to purchase, take on, lease or in exchange or otherwise acquire any real or personal property and any estate or interest in any property either real or personal and any rights or privileges which the Society may think necessary or convenient for the furtherance of its objects;
 - (l) in promotion of the objects of the Society, to provide or to arrange for the provision of members of the Society and their friends and for such other persons as the Council may think fit of meals, food, liquors, and provisions and refreshments of all kinds and also to purchase hire, provide and maintain all kinds of furniture, furnishings utensils, plate, linen, glass and other effects of a like nature for all or any of the purposes listed and to conduct, promote, give or support dinners, balls, concerts and musical, dramatic and other social entertainments for the benefit of members of the Society and their guests and generally to arrange functions of all kinds and raise funds by all means for the purposes of the Society;
 - (m) in promotion of the objects of the Society, to establish, promote or assist in establishing or promoting and to amalgamate or affiliate with or become a member of or subscribe to any other company, association, institution or body whose objects are substantially similar to the objects of the Society or the establishment, promotion or assistance of which may be beneficial to the Society;
 - (n) subject to the stated restrictions as to the application of the Society's income and property, to invest and deal with the moneys of the Society not immediately required upon such securities and investments and upon such terms and conditions and generally in such manner as may from time to time be determined;

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- (o) to borrow or raise or secure the payment of money in such manner as the Society thinks fit and in particular by the issue of or upon bonds, debentures, bills of exchange, promissory notes, debentures or other obligations or securities;
 - (p) to lend any money, property or assets of the Society to any institution, person, company or association for any purchase directly or indirectly incidental to the objects of the Society upon such terms and conditions as the Society thinks fit and to charge interest to that paid, for the time being by the Society's bankers in respect of term deposits;
 - (q) to sell, improve, lease, mortgage, dispose of or otherwise deal with all or any part of the property of the Society;
 - (r) to obtain or accept subscriptions, donations and gifts of property whether real or personal and whether subject to any special trust or not for any one or more of the objects of the Society. If the Society takes or hold any property which may be subject to any trusts, the Society shall deal with the property only in such manner as is allowed by law having regard to trusts;
 - (s) to insure and keep insured all or any of the Society's property against theft, loss or damage by fire, storm, tempest, lightning, flood, explosion, accident, earthquake, perils of the sea or other claims and demands which may arise through accident, negligence, injury or hurt no matter how arising to any person whether an employee of the Society or not and to insure and keep insured the Society or its employees against any other insurable risk;
 - (t) to draw, accept, endorse, discount, execute and issue cheques, drafts, orders, promissory notes, bills of exchange, bills of lading, warrants, bonds, coupons, debentures and/or other negotiable or transferable instruments;
 - (u) to purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any company, institution, society or association with which the Society is authorised to amalgamate or associate;
 - (v) to enter into any arrangement with any government, quasi-government or local authority or any institution, association, company or person which may seem to be conducive to the objects of the Society and to acquire or obtain from any such government or authority, institution, company or person any charters, decrees, rights, privileges and concessions which may be conducive to any such objects and comply with any such arrangements charters, contracts, decrees, rights, privileges and concessions;
 - (w) to do any of the foregoing matters or things either alone or jointly or in co-operation with any government or other authority, institution, company or person as the Society may consider proper; and

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- (x) to do all such other things as the Society deems to be directly or indirectly incidental or conducive to the attainment of any or all of the above objects.

INCOME AND PROPERTY

8. Application of income and property

- (a) Subject to clauses 8(b) and 8(c), the profits (if any) or other income and property of the Society must be applied solely towards the promotion of the objects of the Society set out in clause 7 and no portion of it may be paid or transferred, directly or indirectly, to any member of the Society whether by way of dividend, bonus or otherwise.
- (b) Nothing in clause 8(a) prevents any payment in good faith by the Society of:
- (i) reasonable and proper remuneration to any member for any services actually rendered or goods supplied in the ordinary and usual course of business to the Society;
 - (ii) the payment or reimbursement of out-of-pocket expenses incurred by a member of the Society on behalf of the Society where the amount payable does not exceed an amount previously approved by the Councillors of the Society;
 - (iii) reasonable and proper rent for premises let or demised by any member of the Society to the Society;
 - (iv) moneys to any member, 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 Council and where the amount payable is approved by the Council and is not more than an amount which commercially would be reasonable payment for the service; or
 - (v) interest at a rate not exceeding the Prescribed Rate on money borrowed from members of the Society.
- (c) The Society must not pay fees to Councillors but may make payments in good faith for:
- (i) the payment or reimbursement of out-of-pocket expenses incurred by a Councillor in the performance of any duty as Councillor where the amount payable does not exceed an amount previously approved by the Council;

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- (ii) moneys to any Councillor, 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 Council and where the amount payable is approved by the Council and is not more than amount which commercially would be reasonable payment for the service;
 - (iii) any salary or wage due to the Councillor as an employee of the Society where the terms of employment have been approved by the Council;
 - (iv) an indemnity, exception, insurance premium or payment for legal costs as referred to in s212 of the Law and as permitted by clause 66;
 - (v) any payment to a Councillor in the capacity of a member; and
 - (vi) any other payment to any Councillor approved by the Council.

LIABILITY

9. Limited Liability

The liability of the members is limited.

10. Extent of liability

Each member undertakes to contribute to the property of the Society if the Society is wound up while he, she or it is a member or within 1 year after he, she or it ceases to be a member, for payment of the Society's debts and liabilities contracted before he, she or it ceases to be a member and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, but not exceeding A\$20.00.

AMENDMENT OF CONSTITUTION

11. Amendment of constitution

No addition, alteration or amendment to this constitution will be effective unless such addition, alteration or amendment is carried out in accordance with the Law.

MEMBERSHIP

12. Members

- (a) The number of members with which the Society proposes to be registered is unlimited.
- (b) The Society shall consist of members divided into classes which may determined by the Council from time to time. Such classes may include the class consisting of Honorary Members and the class consisting of Life Members.
- (c) The joining fee and annual subscription payable by the various classes of members of the Society, other than Honorary Members and Honorary Life Members, shall be as prescribed by the Council from time to time.

13. Application for membership

- (a) A person who completes an application form for membership (which form shall be in a form that is approved by the Council from time to time) and who pays the application fee and the appropriate subscription for the classification of membership shall thus become registered as a member of the Society subject to approval by the Council as set out in Clause 13(b). An application for membership must be in writing, signed by the applicant and in a form prescribed by the Council from time to time, if any, and accompanied by such evidence of eligibility as required by the Council from time to time.
- (b) The Council shall approve all applications for membership referred to in Clause 13(a) at its discretion and it may refrain from so doing without stating any reason. The decision of the Council on application for membership and as to the class of membership for which the applicant is eligible shall be conclusive. The Council may resolve to delegate its functions under this clause and may, in its absolute discretion, resolve to withdraw such delegation.
- (c) Upon application in writing to the Council and with its approval, a member by transfer from one class of membership to another class upon payment of such different rate of subscription for the current year as the Council may generally or in a particular case determine and without further nomination.
- (d) Subject to the other clauses of this Constitution and to any by-laws or Determinations, being in force and made by the Council, all members of the Society shall be entitled to use the premises and property of the Society but at such charges, and on such conditions, if any, as the Council in its discretion shall from time to time determine.

14. Annual subscription

- (a) The annual subscription payable by members of the Society is the amount prescribed by the Council from time to time.
- (b) The annual subscription period will be as determined by Council from time to time.
- (c) Notwithstanding anything contained in this clause, the Council may at its discretion determine either generally or in a particular case what proportionate part of the annual subscription shall be payable by a member elected during any year.

CESSATION OF MEMBERSHIP

15. Resignation of a member

A member may at any time, by giving notice in writing to the Secretary, resign as a member of the Society. The resignation will be effective from the date of receipt of the notice by the Secretary/Treasurer. That member's name must be removed from the register of members. Any member who resigns remains liable for any subscriptions and other moneys payable by him, her or it to the Society and unpaid at the date of resignation.

16. Non-payment of subscriptions

- (a) If the subscription of a member remains unpaid for a period of 30 days (or a longer period if the Council determines) after it becomes due, the Council may:
 - (i) suspend the member from all privileges of membership and, if the Council thinks fit, reinstate the member on payment of all arrears; or
 - (ii) immediately or after a period of suspension,
 - (iii) expel the member from membership of the Society, whether or not all arrears have then been paid, and remove the member's name from the register of members.
- (b) Notwithstanding clause 16(a), the Council has absolute discretion to reinstate any such member upon such terms as to payment of arrears as the Council thinks fit.
- (c) Notwithstanding clauses 16(a) and 16(b), the Council may in its discretion allow such additional time as it thinks fit for the payment of any subscription.

17. Misconduct of a member

- (a) If any member:
 - (i) is in breach of the provisions of this constitution; or
 - (ii) is guilty of any act or omission which, in the opinion of the Council is unbecoming of a member, or prejudicial to the interest of the Society, the Council may by resolution do any one or more of censure, suspend or fine the member or, instead of the foregoing, expel the member from the Society and remove the member's name from the register of members.
- (b) The Council must not expel a member under clause 17(a) unless:
 - (i) at least 7 days' notice has been given to the member stating the date, time and place at which the question of expulsion of that member is to be considered by the Council, and the nature of the alleged misconduct; and
 - (ii) the member is given the opportunity of giving to the Council, orally or in writing, any explanation he, she or it may think fit.
- (c) If the Council resolves to expel a member, the Secretary/Treasurer must immediately give notice of this to the member. The member then has the right, exercisable by notifying the Secretary within 7 days after receipt of the notice (the **Expulsion Notice Period**), to have the issue dealt with by the Society in general meeting. In that event, a general meeting of the Society must be called for that purpose, having the same powers as the Council has under clause (a). If a resolution to expel the member is passed at the meeting by a majority of two-thirds of the Members Present, the member ceases to be a member on the making of the resolution and the member's name must be removed from the register of members.
- (d) If the member does not notify the Secretary/Treasurer on or before the expiration of the Expulsion Notice Period that the member wishes to have the issue dealt with by the Society in general meeting, the member ceases to be a member on the expiration of the Expulsion Notice Period and the member's name must be removed from the register of members.
- (e) Every person ceasing to be a member of the Society whether by retirement, expulsion, death, non payment of subscription or other debt or for any other reason shall forfeit all rights and claims upon the Society to enjoy the privileges of membership.

18. Other grounds for cessation of membership

- (a) A member's membership of the Society automatically ceases if the member becomes bankrupt or insolvent or makes an assignment or composition with or for the benefit of his, her or its creditors or, in the case of a Corporate Member, goes into liquidation (except for the purpose of reconstruction) or is dissolved or wound up or an order is made by a court for the winding-up or deregistration of the Corporate Member.
- (b) The Council may at any time in its absolute discretion by resolution cancel the membership of a member which in the opinion of the Council has ceased to be qualified for membership.

19. Liability for subscription fees and other amounts following cessation

Any member ceasing to be a member:

- (a) will not be entitled to any refund (or part refund) of an entrance fee or subscription;
- (b) will remain liable for and must pay to the Society all subscriptions and moneys which were due and unpaid on the date of ceasing to be a member; and
- (c) will remain liable for amounts which the member is or may become liable to pay under clause 10.

GENERAL MEETINGS

20. Power of Councillors to convene

- (a) The Council may convene a general meeting whenever the Council thinks fit.
- (b) The Council may cancel by notice in writing to all members any meeting convened by the Council, except that a meeting convened on the requisition of a member or members must not be cancelled without the consent of the relevant member or members.
- (c) The Council may postpone a general meeting or change the place at which it is to be held by notice not later than 72 hours prior to the time of the meeting to all persons to whom the notice of meeting (the **first notice**) was given. The postponing notice must specify the place, date and time of the meeting. The meeting is taken to be duly convened under the first notice.

21. Notice of general meetings

- (a) At least 21 days' notice must be given of a meeting of the Society's members.
- (b) Each notice convening a general meeting must:
 - (i) set out the time and place, date and time for the meeting; and
 - (ii) state the general nature of the meeting's business; and
 - (iii) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
 - (iv) if a member is entitled to appoint a proxy, contain a statement setting out the following information:
 - (A) that the member has a right to appoint a proxy;
 - (B) whether or not the proxy needs to be a member of the Society;
 - (C) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.
- (c) The non-receipt of a notice convening a general meeting by, or the accidental omission to give notice to, any person entitled to receive notice does not invalidate the proceedings at or any resolution passed at the meeting.

22. Holding of general meetings

- (a) A general meeting must be held for a proper purpose.
- (b) A general meeting must be held at a reasonable time and place.

23. Business of general meetings

Unless all members are present as Members Present and agree otherwise, business must not be transacted at any general meeting except as set out in the notice of meeting.

24. Quorum

- (a) Business must not be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this constitution, 30 Members Present constitute a quorum.

25. If quorum not present

If a quorum is not present within 15 minutes after the time appointed for the meeting:

- (a) where the meeting is convened on the requisition of members, the proposed meeting is automatically dissolved (subject to clause 27(a));
- (b) in any other case:
 - (i) the meeting stands adjourned to a day and at a time and place as the Council decides or, if no decision is made by the Council, to the same day in the next week at the same time and place; and
 - (ii) if at the adjourned meeting a quorum is not present within 15 minutes after the time appointed for the meeting, those members who are present and entitled to vote shall be a quorum.

26. Chair of meetings

- (a) Subject to clause 25(b), the President of the Council or, in the President's absence, the Vice-President will preside as chair at every general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no President or Vice-President; or
 - (ii) the President or Vice-President 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 members of Council present may choose one of their number or, in the absence of all members of Council or if none of the Councillors present wish to act, the Members Present may elect one of their number to be chair of the meeting.

27. Adjournments

- (a) The chair may and must if so directed by the meeting adjourn the meeting from time to time and from place to place.
- (b) The only business which may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (c) 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.
- (d) Except as provided by clause 27(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

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- (e) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

28. Voting at general meetings

- (a) Any resolution to be considered at a meeting must be decided on a show of hands unless a poll is demanded.
- (b) A declaration by the chair that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting are conclusive evidence of the fact without the need to show the number or proportion of the votes recorded in favour of or against the resolution.
- (c) A poll for a resolution may be demanded by at least 5 Members or 5% of Members Present and entitled to vote on the resolution or the chair.
- (d) A poll may not be demanded on the election of a chair or on a resolution for adjournment.
- (e) If and whenever the Council thinks fit, it may submit any question to the vote of all members for the time being entitled to vote at general meeting by means of a ballot in such form and returnable in such manner as the Council decides. A resolution approved by a majority of members voting by such a ballot shall have the same force and effect as such resolution would have carried by such a majority at a duly constituted general meeting of the Society.

29. Procedure for polls

- (a) A poll when demanded must be taken in the manner and at the time the chair directs.
- (b) The result of the poll is a resolution of the meeting at which the poll was demanded.
- (c) If a poll has been demanded at a meeting, the meeting may continue with the transaction of business other than the resolution on which the poll was demanded.

30. Chair's casting vote

In the case of an equality of votes on a show of hands or on a poll the chair of the meeting has a casting vote in addition to any vote to which the chair may be entitled as a member, proxy, attorney or body corporate representative.

31. Representation and voting of members

- (a) Subject to this constitution and to clause 31(b):
 - (i) at meetings of members each member entitled to attend and vote may attend and vote in person or by proxy, or attorney and (where the member is a Corporate Member) by representative;
 - (ii) a member is not entitled to vote at a general meeting unless all sums presently payable by the member in respect of membership in the Society have been paid; and
 - (iii) on a show of hands and on a poll, every Member Present having the right to vote at the meeting has 1 vote.
- (b) Subject to 16(a), where the membership of the Society has been divided into classes pursuant to clause 12(b), then each natural person over the age of 18, other than Honorary Members and Honorary Life Members, who is recorded by the Society as being a natural person within a membership, shall be entitled to one vote.

32. Objections to qualification to vote

- (a) An objection to the qualification of a person to vote may be raised only at the meeting or adjourned meeting at which the vote objected to is tendered.
- (b) Any objection must be referred to the chair of the meeting, whose decision is final.
- (c) A vote allowed after an objection is valid for all purposes.

33. Number of proxies

A member entitled to vote may appoint 1 proxy. A proxy need not be a member.

34. Form of proxy

- (a) An instrument appointing a proxy must:
 - (i) be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing; or
 - (ii) if the appointor is a corporation, be either under seal or under the hand of a duly authorised officer or attorney.
- (b) A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.

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- (c) An instrument appointing a proxy may be in any form that the Council may accept or stipulate.

35. Lodgement of proxies

- (a) For an instrument appointing an attorney to act on behalf of a member at all meetings of the Society (or at all meetings for a specified period) to be effective the following documents must be received by the Society not less than 48 hours (or any shorter period as the Council may permit) before the commencement of the meeting or adjourned meeting at which the attorney proposes to vote:
- (i) the power of attorney or a certified copy of that power of attorney; and
 - (ii) any evidence that the Council may require of the validity and non-revocation of that power of attorney.
- (b) For the purposes of clause 34(a), the Society receives these documents when they are received at any of the following:
- (i) the Society's registered office;
 - (ii) a fax number at the Society's registered office; or
 - (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting.

36. 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 has been received by the Society at its registered office not less than 48 hours (or any shorter period as the Council may permit) 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 the resolution for which the proxy is proposed to be used.

37. 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.

38. Right of officers of the Society and other persons to attend general meeting

Any person, including officers of the Society (whether a member or not) requested by the Council to attend any general meeting is entitled to be present and, at the request of the chair, to speak at that general meeting.

PATRON

39. Appointment of Patron

A Patron may be appointed by a general meeting of the Society either for a specified or unspecified period as the general meeting which shall make such appointment thinks fit.

APPOINTMENT AND REMOVAL OF COUNCILLORS

40. Council

- (a) The Council shall include elected members with voting rights as set out below.
 - (i) Unless otherwise determined by the Society in general meeting, the Council shall consist of between 8 and 12 elected members, the number of which within this range shall be determined by the Council from time to time and which number shall include a President, a Vice-President and an Secretary/Treasurer. If the total number of elected members exceeds 12 solely as a result of the appointment of a member of Council under clause 39(b)(ii), then that will be permitted until the next general meeting of the Society at which the increase in numbers must be approved by a resolution of members.

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- (ii) In addition, the Trustees of the Art Gallery of New South Wales (who, by virtue of being Trustees, are members of the Society) may from time to time nominate one of their number to hold office as a member of the Council.
 - (iii) The Trustees of the Art Gallery of New South Wales may also nominate the Director of the Art Gallery of New South Wales to be a member of the Council and who shall be a member of the Council ex officio. In the absence of the Director of the Art Gallery of New South Wales, one or more of the Deputy Directors shall on a similar nomination either generally or for a particular meeting be the alternate for the Director of the Art Gallery of New South Wales and attend meetings and vote in his or her place.
 - (iv) All ex officio members shall have the same status as elected members of Council during their tenures as members of the Council and shall receive all appropriate notices and information.
 - (v) Members nominated under clause 40(a)(ii) do not count towards the number limit on elected members as set out in clause 40(a)(i).
 - (vi) Notwithstanding clause 40(a)(iv), ex officio members do not count towards the number limit on elected members as set out in clause 40(a)(i).
- (b) The Council shall include appointed members as set out below.
- (i) The Council may appoint any number of non-elected Councillors. Each non-elected Councillor shall hold office for an initial term as determined by the Council and which shall not exceed three Periods of Service dating from the General Meeting preceding the appointment, following which initial term he or she shall retire but shall be eligible for re-appointment. Non-elected Councillors under this clause 39(b)(i) shall not be entitled to receive notices of meetings nor are they entitled to vote.
 - (ii) If there is no practising artist among the elected Council members, the Council may appoint one for such period as the Council determines and which shall not exceed three Periods of Service dating from the General Meeting preceding the appointment. Any Council member appointed under this clause 39(b)(ii) shall have the same status as an elected member of Council during their tenure as a member of Council and shall receive all appropriate notices and information but will not be subject to retirement under clause 40(a).
- (c) The Secretary (who shall also serve as the Treasurer) shall be appointed in accordance with the Law and on such terms as the Council thinks fit.

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- (d) Subject to clause 41, a vacancy occurring in the office of President shall be filled by the Council from among its members.

41. Rotation of members of the Council

- (a) At the end of each annual general meeting, those Council members (but not including ex officio and non-elected members under clause 39(b)(i)) who have served 3 consecutive Periods of Service in their current Terms of Office shall retire as members of the Council.
- (b) A member of Council retiring as contemplated by clause 41(a) will be eligible for nomination for re-election only if at the time of nomination for re-election that member has served less than 3 consecutive Terms of Office, except if:
- (i) the member is the incumbent President and has held the office of President for less than 2 years prior to the date when that member would be due to retire pursuant to this clause 41, in which case that member shall be entitled to stand for re-election to the Council for one further term; or
 - (ii) if a period of 3 years passes between the date of retirement and the date of re-election, in which case a member of the Council who is otherwise ineligible for re-election under this clause 41 may regain eligibility for election.
- (c) A person, other than a retiring Councillor, is not eligible for election as a Councillor at a general meeting unless the person, or a member who intends to propose the person, has given notice in accordance with clause 42.

40A. Transitional provision

At the date of adoption of this constitution and until the closure of the annual general meeting held in 2002, the following provisions apply to the rotation of members of the Council, notwithstanding clause 41(a).

- (a) Those who are Councillors at the commencement of the annual general meeting held in 2000 may each serve 12 Periods of Service in total before they are obliged to retire.

42. Appointment and removal

- (a) Subject to the Law and to clauses 39 and 41, the Society may at any time by resolution passed in general meeting:
- (i) appoint any person as a Councillor; or

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- (ii) remove any Councillor from office.
 - (b) Subject to the Law, the Council may at any time appoint any person as a Councillor.
 - (c) Subject to clause 40, a Councillor must be a member of the Society.
 - (d) The vacancies on the Council arising from the retirement of members of the Council under this constitution shall be filled by election as follows.
 - (i) Between 3 and 6 months before each annual general meeting of the Society, the Secretary/Treasurer (or a person nominated by the Council) shall forward to all members a notice of the forthcoming election of members of the Council to take the place of retiring members and calling for nominations of candidates for election. The non-receipt of any notice shall not invalidate any election.
 - (ii) Nomination for candidates for election as members of the Council other than retiring members of the Council shall be left with the Secretary/Treasurer or left at the office of the Society no later than 4pm of the afternoon on the day specified in the notice of the forthcoming election which will be no later than 12 weeks preceding the meeting at which the election is to take place.
 - (iii) The nomination of a candidate for election must be signed by at least one other member of the Society and contain the consent of the member nominated and shall be in a form as approved by the Council from time to time.
 - (iv) At the expiration of the time for receiving nominations, the Secretary/Treasurer (or a person nominated by the Council) shall prepare a list containing the names of all persons nominated together with the names of retiring Councillors who are eligible for re-election and who have indicated their willingness to stand for re-election.
 - (v) If the number of candidates does not exceed the number of vacancies to be filled, the Chair at the meeting which the election is to take place shall declare the candidates referred to in clause 41(d)(iv) duly elected.
 - (vi) If there are more candidates than vacancies to be filled, the election shall be by ballot of the members of the Society conducted in the following manner:
 - (A) the Secretary/Treasurer (or a person nominated by the Council) shall at least 1 month before the date of the meeting send to each member entitled to vote, the following:

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- (1) a voting document stating the number of vacancies to be filled and the names of all candidates;
 - (2) documentation or material enabling members to return their vote in secret and to provide details of their membership and either signature or other form of identification separately from the voting document; and
 - (3) instructions for completion of the voting process, including instructions concerning the return of votes and details of membership and identification to the Secretary/Treasurer (or a person nominated by the Council).
- (B) The non-receipt by any member of any one or more of the above items shall not invalidate the ballot.
 - (C) Each member shall follow the instructions provided under clause 42(d)(vi)(A)(3) in order to vote.
 - (D) Each person voting shall vote for no more than the full number of candidates required to be elected to fill the vacancies. Any voting documentation on which votes are recorded for more than the number of candidates to be elected or which is not completed and received in accordance with clause 42(d)(vi)(A)(3) shall be rejected as informal.
 - (E) The date announced to members as the closing date for voting shall be no more than one month from the date of distribution of voting documents.
 - (F) All voting documentation received by the Secretary/Treasurer (or a person nominated by the Council) not later than 4.00pm in the afternoon on the date announced to members as the closing date for voting shall be counted in the ballot.
 - (G) After the closing of the ballot, the Secretary/Treasurer (or a person nominated by the Council) and scrutineers shall check the identification of members (including but not limited to signatures of members) upon the membership identification documentation and such members' qualification to vote and proceed to the examination of the voting documentation and shall report in writing the result of the ballot to the Chair of the ordinary general meeting.
 - (H) The result of the ballot shall be determined by the Secretary/Treasurer (or a person nominated by the Council)

assisted by two scrutineers appointed by the Council. The Society's auditor shall also be in attendance.

- (l) The candidates to the number required to fill the vacancies receiving the greatest number of votes shall be deemed to be elected.
- (vii) In the event of an equality of votes in favour of two or more candidates and it being necessary that one should have a majority over any other candidate or candidates to secure election the question shall be resolved by lot ballot or poll conducted by the Chair of the ordinary general meeting at that meeting in such manner as the Chair may in his or her absolute discretion determine.
- (viii) A declaration as to the results of such election shall be made at the ordinary general meeting and the members so elected shall take office at the end of the said ordinary general meeting.
- (ix) In any case of minor irregularity in compliance with sub-clause 42(d)(vi)(A)(3) or in any other case of doubt as to the formality of any voting documentation the matter shall be referred to the President or if he or she is not available, to the Vice-President and the decision of the President or the Vice-President as the case may be shall be final and conclusive.
- (x) The Council may direct the Secretary to destroy the ballot papers or documentation at any time after the expiration of the month after the date of the declaration of the election at the annual general meeting.
- (e) Any casual vacancy in the Council or any vacancy occurring by failure of sufficient candidates to nominate for election at the ordinary general meeting may be filled up by the Council at such time as the Council may consider convenient subject only to Clause 40. Any person appointed as a member of the Council under this clause shall hold office only until and during the next succeeding ordinary General Meeting and shall then be eligible for re-election as provided for in this constitution following the appointment.
- (f) At the conclusion of each ordinary or annual general meeting, a meeting of the Council shall be held at which all members of specific offices shall retire from their specific offices and at which the Council elects from its members a President, a Vice-President and an Honorary Secretary/Treasurer.
- (g) The President or in his or her absence a member of the Council chosen by the members of the Council present shall preside at the meeting of the Council referred to in sub-clause (f).

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- (h) The Society may by ordinary resolution remove any member of the Council before the expiration of his or her period of office.

43. Vacation of office

- (a) In addition to the circumstances in which the office of a Councillor becomes vacant:
- (i) under the Law; or
 - (ii) because of a resolution under clause 41(a)(ii);
- the office of a Councillor becomes vacant if the Councillor:
- (i) ceases to be a member of the Society or has his or her membership of the Society suspended;
 - (ii) 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;
 - (iii) resigns by notice in writing to the Secretary/Treasurer;
 - (iv) is absent without the consent of the Council from 3 consecutive meetings of the Council;
 - (v) becomes bankrupt;
 - (vi) dies;
 - (vii) becomes prohibited from being a director of a company under the Law;
 - (viii) if a representative of a Corporate Member, ceases to be a representative;
or
 - (ix) holds any office of profit under the Society.

POWERS AND DUTIES OF COUNCILLORS

44. Powers of Councillors

- (a) Subject to the Law and this constitution, the business of the Society is managed by the Councillors, who may exercise all powers of the Society which are not, by the Law or this constitution, required to be exercised by the Society in general meeting.
- (b) The Councillors must comply with their duties as Councillors under Law and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
- (i) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Councillor of the Society;

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- (ii) to act in good faith in the best interests of the Society and to further the objects of the Society set out in clause 7;
 - (iii) not to misuse their position as a Councillor;
 - (iv) not to misuse information they gain in their role as a Councillor;
 - (v) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 53;
 - (vi) to ensure that the financial affairs of the Society are managed responsibly; and
 - (vii) not to allow the Society to operate while it is insolvent.
- (c) Without limiting the generality of clause 44(a), the Councillors may exercise all the powers of the Society:
- (i) to borrow money, to charge any property or business of the Society;
 - (ii) to issue debentures or give any other security for a debt, liability or obligation of the Society or of any other person.

45. Appointment of attorneys

- (a) The Councillors may, by power of attorney, appoint any person to be the attorney of the Society for the purposes, with the powers, authorities and discretions vested in or exercisable by the Councillors for any period and subject to any conditions as they think fit.
- (b) Any appointment under clause 45(a) may be made on terms for the protection and convenience of persons dealing with the attorney as the Councillors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

46. Negotiable instruments

All negotiable instruments of the Society must be executed by the persons and in the manner the Councillors decide from time to time.

PROCEEDINGS OF COUNCILLORS

47. Proceedings

- (a) The Councillors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit but in any event no less frequently than 6 times in each 12 months.

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- (b) A Councillor may at any time, and on the request of a Councillor or a Secretary/Treasurer must, convene a meeting of the Councillors.
 - (c) Reasonable notice, being unless otherwise decided 30 days, must be given to every Councillor of the place, date and time of every meeting of the Councillors. Where any Councillor is for the time being outside of Australia, notice need only be given to that Councillor if contact details have been given, but notice must always be given to any Councillor being under the Law an alternate director in Australia whose appointment by that Councillor is for the time being in force.

48. Meetings by technology

- (a) For the purposes of the Law, each Councillor, on becoming a Councillor (or on the adoption of this constitution), consents to the use of the following technology for calling or holding a Council meeting:
 - (i) video;
 - (ii) telephone;
 - (iii) electronic mail;
 - (iv) any other technology which permits each Councillor to communicate with every other Councillor; or
 - (v) any combination of the technologies described in the above paragraphs.A Councillor may withdraw the consent given under this clause in accordance with the Law.
- (b) Where the Councillors are not all in attendance at one place and are holding a meeting using technology and each Councillor can communicate with the other Councillors:
 - (i) the participating Councillors are, for the purpose of every provision of this constitution concerning meetings of the Council, taken to be assembled together at a meeting and to be present at that meeting; and
 - (ii) all proceedings of those Councillors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were present.

49. Quorum at meetings

At a meeting of the Council, the number of Councillors whose presence is necessary to constitute a quorum is 6 Councillors entitled to vote. Unless the Councillors determine otherwise, the quorum need only be present at the time when the meeting proceeds to business.

50. Vacancies

The Councillors may act even in the event of a vacancy or vacancies in the office of a Councillor or offices of Councillors, but if the number of Councillors is not sufficient to constitute a quorum at a meeting of the Council, the Councillors may act only to appoint a sufficient number of Councillors to constitute a quorum.

51. Chair

- (a) The President or failing him or her the Vice-President shall be entitled to take the chair at each meeting.
- (b) If neither the President nor the Vice-President is present at the time of appointment of the chair or within 10 minutes after that, the Council may elect one of their number as their chair and may decide the period for which the chair is to hold office as chair.
- (c) Where a meeting of Councillors is held and:
 - (i) a chair has not been elected as provided by clause 51(b); or
 - (ii) the chair is not present at the time appointed for the holding of the meeting or does not wish to chair the meeting,the Councillors present may elect one of their number to be a chair of the meeting.

52. Proceedings at meetings

- (a) Subject to this constitution, questions arising at a meeting of the Council are decided by a majority of votes of Councillors present and voting and for all purposes any such decision is taken to be a decision of the Councillors.
- (b) In the case of an equality of votes, the chair of the meeting has a casting vote in addition to the chair's deliberative vote.

53. Material personal interests

- (a) A Councillor is not disqualified by the Councillor's office from contracting with the Society or any related body corporate of the Society in any capacity by reason of holding of the office of Councillor .
- (b) In relation to a contract or arrangement in which a Councillor has a material personal interest:
 - (i) the fact that the Councillor signed the document evidencing the contract or arrangement will not in any way affect its validity;

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- (ii) a contract or arrangement made by the Councillor or any related body corporate with a Councillor may not be avoided merely because the Councillor is a party to the contract or arrangement or otherwise interested in it; and
 - (iii) the Councillor will not be liable to account to the Society for any profit derived in respect of the contract or arrangement merely because of the Councillor's office or the fiduciary relationship it entails.
 - (c) Subject to paragraph (d), a Councillor who has a material personal interest in a matter that relates to the affairs of the Society must give the other Councillors notice of his or her interest.
 - (d) A Councillor with a material personal interest in a matter that relates to the affairs of the Society is not required to give notice in the following circumstances:
 - (i) if all of the following conditions are met:
 - (A) the Councillor has already given notice of the nature and extent of the interest and its relation to the affairs of the Society;
 - (B) if a person who was not a Councillor at the time the notice was given is appointed as a Councillor, 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; or
 - (ii) if the Councillor has given a standing notice of the nature and extent of the interest in accordance with the Law and that standing notice is still effective in relation to the interest; or
 - (iii) as otherwise permitted under the Law.
 - (e) Notices of material personal interest given by Councillors must:
 - (i) give details of the nature and extent of the Councillor's interest and the relation of the interest to the affairs of the Society;
 - (ii) be given at a Council meeting as soon as practicable after the Councillor becomes aware of their interest in the matter; and
 - (iii) be recorded in the minutes of the Council meeting at which the notice is given.
 - (f) A Councillor who has a material personal interest in a matter that is being considered at a Council meeting must not be present while the matter is being considered at the meeting or vote on the matter, except in the following circumstances:

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- (i) if the material personal interest is a matter that is not required to be disclosed under this clause or under the Law; or
 - (ii) if the Councillors who do not have a material personal interest in the matter have passed a resolution that:
 - (A) identified the Councillor, the nature and the extent of the Councillor's interest in the matter and its relation to the affairs of the Society; and
 - (B) states that those Councillors are satisfied that the interest should not disqualify the Councillor from voting or being present; or
 - (iii) as otherwise permitted under the Law.
 - (g) Nothing in this clause affects the duty of a Councillor :
 - (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Councillors' duties or interests as a Councillor, to declare at a meeting of Councillors, the fact and the nature, character and extent of the conflict; or
 - (ii) to comply with the Law.

54. Committees

- (a) The Councillors may delegate any of their powers to a committee or committees consisting of such number of them and/or other persons as they think fit. A committee may consist of one or more persons.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Councillors. A power so exercised is taken to be exercised by the Councillors.
- (c) Clauses 47, 48, 51 and 52 apply to any committee as if each reference in those articles to the Councillors was a reference to the members of the committee and each reference to a meeting of Councillors was to a meeting of the committee.
- (d) The number of members whose presence at a meeting of the committee is necessary to constitute a quorum is the number determined by the Councillors and, if not so determined, is 2. Unless the Councillors determine otherwise, the quorum need only be present at the time when the meeting proceeds to business.
- (e) The minutes of all the proceedings and decisions of every committee must be made, entered and signed in the same manner in all respects as set out in clause 59.

55. Written resolutions

- (a) If a document:
 - (i) is sent to all those entitled to receive notice of a meeting at which a resolution could be put;
 - (ii) contains a statement that the signatories to it are in favour of that resolution;
 - (iii) the terms of the resolution are set out or identified in the document; and
 - (iv) has been signed by a majority of the Councillors entitled to vote on that resolution,

a resolution in those terms is passed on the day on which and at the time at which the document was signed by a majority of Councillors and the document has effect as a minute of the resolution.

- (b) For the purposes of clause (a):
 - (i) 2 or more separate documents containing statements in identical terms each of which is signed by one or more Councillors are together taken to constitute one document containing a statement in those terms signed by those Councillors at the time at which the last of those documents to be signed was signed by a Councillor;
 - (ii) a fax which is received by the Society or an agent of the Society and is sent for or on behalf of a Councillor is taken to be signed by that Councillor not later than the time of receipt of the fax by the Society or its agent in legible form.

56. Defects in appointments

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

SECRETARIES AND OTHER OFFICERS

57. Secretaries

- (a) A Secretary of the Society holds office on the terms and conditions, as to remuneration and otherwise, as the Councillors decide.

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- (b) The Councillors may at any time terminate the appointment of a Secretary.

SEALS AND EXECUTING DOCUMENTS

58. Seals and their use

- (a) The Society may have a common seal. If the Society has a common seal it may also have a duplicate common seal.
- (b) A Seal may be used only by the authority of the Councillors, or of a committee of the Councillors authorised by the Councillors to authorise the use of the Seal. Every document to which the Seal is affixed must be signed by:
- (i) 2 Councillors;
 - (ii) a Councillor and the Secretary/Treasurer (or another person appointed by the Councillors to countersign that document or a class of documents in which that document is included).

This clause does not limit the ways in which the Society may execute a document.

MINUTES

59. Minutes and access

- (a) The Society must keep minute books in which it records within one month:
- (i) proceedings and resolutions of meetings of the Society's members;
 - (ii) proceedings and resolutions of Councillors' meetings;
 - (iii) resolutions passed by members without a meeting; and
 - (iv) resolutions passed by Councillors without a meeting.
- (b) The Society must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:
- (i) the chair of the meeting; or
 - (ii) the chair of the next meeting.
- (c) The Society must ensure that minutes of the passing of a resolution without a meeting are signed by a Councillor within a reasonable time after the resolution is passed.
- (d) The Society must keep its minute books at:
- (i) its registered office; or
 - (ii) its principal place of business in New South Wales, Australia.

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- (e) The Society 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.
 - (f) A member may ask the Society in writing for a copy of:
 - (i) any minutes of a meeting of the Society's members or an extract of the minutes; or
 - (ii) any minutes of a resolution passed by members without a meeting.

RECORDS

60. Financial and related records

- (a) The Society must make and keep written financial records that:
 - (i) correctly record and explain its transactions and financial position and performance; and
 - (ii) enable true and fair financial statements to be prepared and to be audited.
- (b) The Society must also keep written records that correctly record its operations.
- (c) The Society must retain its records for at least 7 years.
- (d) The Councillors must take reasonable steps to ensure that the Society's records are kept safe.

INSPECTION OF RECORDS

61. Inspection of records

- (a) The Councillors may authorise a member to inspect books of the Society to the extent, at the time and places and under the conditions, the Councillors consider appropriate.
- (b) A member (other than a Councillor) does not have the right to inspect any document of the Society except as provided by law or as authorised by the Councillors.

NOTICES

62. Notices generally

- (a) 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 Society may be served or sent is not entitled to receive any notice.
- (b) A notice may be given by the Society to any member by:
 - (i) serving it on the member personally;
 - (ii) sending it by post to the member or leaving it at the member's address as shown in the register or the address supplied by the member to the Society for the giving of notices;
 - (iii) serving it in any manner contemplated in this clause (b) on a member's attorney as specified by the member in a notice given under clause (c);
 - (iv) fax to the fax number supplied by the member to the Society for the giving of notices; or
 - (v) transmitting it electronically to the electronic mail address given by the member to the Society for giving notices.
- (c) A member may, by written notice to the Secretary/Treasurer left at or sent to the registered office, require that all notices to be given by the Society or the Councillors be served on the member's attorney at an address specified in the notice.
- (d) Notice to a member whose address for notices is outside Australia must be sent by airmail, fax or electronic mail.
- (e) Where a notice is sent by post, service of the notice is taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected:
 - (i) in the case of a notice of a meeting, on the day after the date of its posting; and
 - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (f) Where a notice is sent by fax or electronic transmission, service of the notice is taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the day it is sent.

63. Notices of general meeting

- (a) Notice of every general meeting must be given:
 - (i) in the manner authorised by clause 62(b);
 - (ii) to every member and to each Councillor; and
 - (iii) to the auditor to the Society (if any).
- (b) No other person is entitled to receive notice of general meetings.

WINDING UP

64. Winding Up

If, on the winding up or dissolution of the Society by any means and for any reason, there remains any property, after the satisfaction of all the Society's debts and liabilities, the property must not be paid to or distributed among the members of the Society, but must be given or transferred to:

- (a) one or more institutions (whether or a member or members of the Society) selected by the members of the Society at or before the dissolution of the Society:
 - (i) having objects similar to the objects of the Society; and
 - (ii) whose constitution prohibits the distribution of its or their income and property to an extent at least as great as that imposed on the Society under clause 8; or
- (b) if there are no institutions meeting the requirements of paragraph (a), to one or more other institutions, associations or bodies (whether or not a member or members of the Society) selected by the members of the Society at or before the dissolution of the Society, the objects of which are the promotion of charity and gifts to which are allowable deductions under the Income Tax Assessment Act 1997; 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 either paragraphs (a) or (b) selected by the Council.

DETERMINATIONS

65. Council's power to make Determinations

Without limiting the operation of clause 44, the Council shall have power from time to time to make Determinations as it sees fit for the conduct of the affairs of the Society and to effect its objects and from time to time to amend, repeal or re-enact its objects.

INDEMNITY

66. Indemnity and Insurance

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- (a) To the extent permitted by law and without limiting the powers of the Society, the Society must indemnify each person who is, or has been, a Councillor or Secretary/Treasurer of the Society against any liability which results directly or indirectly from facts or circumstances relating to the person serving or having served in that capacity in relation to the Society:
- (i) other than:
 - (A) a liability owed to the Society or a related body corporate; or
 - (B) a pecuniary penalty or compensation order made under the Law; or
 - (C) a liability that is owed to someone (other than the Society or a related body corporate) and did not arise out of conduct in good faith; and
 - (ii) for legal costs incurred in defending an action for liability incurred as a Councillor or a Secretary/Treasurer of the Society if the costs are incurred other than:
 - (A) in defending or resisting civil proceedings in which the person is found to have a liability for which there is no indemnity under paragraph (a)(i); or
 - (B) in defending or resisting criminal proceedings in which the person is found guilty; or
 - (C) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the Court to be established; or
 - (D) in connection with proceedings for relief to the person under the Law in which the Court denies the relief.

Paragraph (C) does not apply to costs incurred in responding to actions brought by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

- (b) To the extent permitted by law and without limiting the powers of the Society, the Councillors may authorise the Society to, and the Society may enter into any:
 - (i) documentary indemnity in favour of; or
 - (ii) insurance policy for the benefit of,
a person who is, or has been, a Councillor, Secretary/Treasurer, auditor, employee or other officer of the Society, which indemnity or insurance policy may be in such terms as the Councillors approve and, in particular, may apply to acts or omissions prior to or after the time of entering into the indemnity or policy.
- (c) The benefit of any indemnity previously given to any person in respect of liabilities incurred prior to 13 March 2000 is not affected by this clause.
- (d) The benefit of each indemnity given in paragraph (a) continues, even after its terms or the terms of this clause are modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modification or deletion.