



WEST AUSTRALIAN  
BALLET

# **WEST AUSTRALIAN BALLET COMPANY INC. CONSTITUTION**

**Adopted on 14 May 2019  
Amended on 22 April 2024**

## Contents

PART 1 — PRELIMINARY .....	4
1. Name of the Company .....	4
2. Terms used .....	4
3. Financial year .....	5
PART 2 — ASSOCIATION TO BE NOT FOR PROFIT BODY .....	6
4. Not-for-profit body.....	6
PART 3 — MEMBERS.....	7
Division 1 — Membership .....	7
5. Eligibility for membership .....	7
6. Applying for membership.....	7
7. Dealing with membership applications .....	7
8. Becoming a member .....	7
9. Classes of membership.....	8
10. When membership ceases .....	9
11. Resignation.....	9
12. Rights not transferable.....	9
Division 2 — Membership fees.....	9
13. Membership fees .....	9
Division 3 — Register of members .....	10
14. Register of members .....	10
PART 4 — DISCIPLINARY ACTION, DISPUTES AND MEDIATION .....	11
Division 1 — Term used.....	11
15. Term used: member .....	11
Division 2 — Disciplinary action .....	11
16. Suspension or expulsion.....	11
17. Consequences of suspension .....	12
Division 3 — Resolving disputes .....	12
18. Terms used .....	12
19. Application of Division.....	12
20. Parties to attempt to resolve dispute.....	12
21. How grievance procedure is started .....	13
22. Determination of dispute by Board .....	13

Division 4 — Mediation .....	14
23. Application of Division.....	14
24. Appointment of mediator .....	14
25. Mediation process.....	14
26. If mediation results in decision to suspend or expel being revoked .....	15
PART 5 — BOARD .....	16
Division 1 — Powers of Board.....	16
27. Board .....	16
28. Indemnity .....	16
29. Procedural irregularity.....	16
Division 2 — Composition of Board and duties of Directors .....	16
30. Directors.....	16
31. Non-voting Directors .....	17
32. Chairperson .....	18
33. Secretary .....	18
Division 3 — Election of Directors and tenure of office .....	18
34. How members become Directors.....	18
35. Nomination of Directors.....	19
36. Election of office holders.....	19
37. Election of Directors .....	19
38. Term of office .....	20
39. Resignation and removal from office .....	20
40. When Board membership ceases.....	21
41. Filling casual vacancies .....	21
42. Validity of acts .....	21
43. Payments to Directors .....	21
Division 4 — Board meetings.....	21
44. Board meetings .....	21
45. Notice of Board meetings.....	22
46. Procedure and order of business .....	22
47. Use of technology to be present at Board meetings.....	22
48. Quorum for Board meetings .....	23
49. Voting at Board meetings.....	23

50. Minutes of Board meetings .....	23
Division 5 — Subcommittees and subsidiary offices .....	24
51. Subcommittees and subsidiary offices .....	24
52. Delegation to subcommittees and holders of subsidiary offices .....	25
PART 6 — GENERAL MEETINGS OF COMPANY .....	26
53. Annual general meeting .....	26
54. Special general meetings .....	26
55. Notice of general meetings .....	27
56. Proxies .....	27
57. Use of technology to be present at general meetings .....	28
58. Presiding member and quorum for general meetings .....	28
59. Adjournment of general meeting .....	29
60. Voting at general meeting .....	29
61. When special resolutions are required .....	29
62. Determining whether resolution carried .....	31
63. Minutes of general meeting .....	32
PART 7 — FINANCIAL MATTERS .....	33
64. Source of funds .....	33
65. Control of funds .....	33
66. Financial statements and financial reports .....	33
PART 8 — GENERAL MATTERS .....	34
67. By-laws .....	34
68. Executing documents and common seal .....	34
69. Giving notices to members .....	35
70. Custody of books and securities .....	35
71. Record of office holders .....	36
72. Inspection of records and documents .....	36
73. Publication by Directors of statements about Company business prohibited .....	36
74. Distribution of surplus property on cancellation of incorporation or winding up .....	37
75. Company will establish and maintain a public fund .....	38
76. Alteration of the Constitution .....	39
77. Patrons .....	39
78. Past acts .....	39

## PART 1 — PRELIMINARY

### 1. Name of the Company

The name of the Company is:

**West Australian Ballet Company Inc.**

### 2. Terms used

In this Constitution, unless the contrary intention appears —

**Act** means the *Associations Incorporation Act 2015* (WA);

**Appendix** means an appendix to this Constitution;

**Auditor** means the auditor for the time being of the Company;

**Board** means the board of directors of the Company;

**Board meeting** means a meeting of the Board;

**books**, of the Company, includes the following —

- (a) a register;
- (b) financial records, financial statements or financial reports, however compiled, recorded or stored;
- (c) a document;
- (d) any other record of information;

**By-laws** means by-laws made by the Company under rule 67 (if any);

**Chairperson** means the Director holding office as the chairperson of the Board;

**Commissioner** means the person for the time being designated as the Commissioner under section 153 of the Act;

**Company** means the incorporated association named in this Constitution;

**Constitution** means these rules of the Company, as in force for the time being and as amended from time to time;

**Deputy Chairperson** means the Director holding office as the deputy chairperson;

**Director** means a member of the Board;

**financial records** includes —

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain —

- (i) the methods by which financial statements are prepared; and
- (ii) adjustments to be made in preparing financial statements;

**financial report** has the meaning given in section 63 of the Act;

**financial statements** means the financial statements in relation to the Company required under Part 5 Division 3 of the Act;

**financial year**, of the Company, has the meaning given in rule 3;

**general meeting** means a meeting of the Company convened under Part 6 that all members are entitled to receive notice of and to attend;

**Honorary Life Member** means an honorary life member of the Company at the date of adoption of this Constitution and any person elected as an honorary life member in accordance with rule 9(3);

**member** means any Ordinary Member, Honorary Life Member or any other member who is in a class of membership that has been established by the Board pursuant to rule 9(4), who has been admitted to membership, or deemed admitted to membership, of the Company in accordance with Part 3 of this Constitution and whose name appears in the register of members of the Company;

**Non-voting Director** means a member appointed to the Board in accordance with rule 31;

**Non-voting Member** means any member who is in a class of membership that has been established by the Board pursuant to rule 9(4) which does not confer full voting rights;

**Ordinary Member** means a person who is an ordinary member at the date of adoption of this Constitution and any person admitted as an ordinary member in accordance with rule 9(2);

**Ordinary Director** means a Director who is not an office holder of the Company under rule 30(3);

**ordinary resolution** means a resolution other than a special resolution;

**Patron** means any patron for the time being of the Company;

**register of members** means the register of members referred to in section 53 of the Act;

**rule** means a rule of this Constitution;

**seal** means the common seal of the Company and any duplicate seal;

**Secretary** means the person holding office as the secretary of the Company;

**special general meeting** means a general meeting of the Company other than the annual general meeting;

**special resolution** means a resolution passed by the members at a general meeting in accordance with section 51 of the Act; and

**subcommittee** means a subcommittee appointed by the Board under rule 51(1)(a).

### 3. Financial year

The financial year of the Company is the period of TWELVE (12) months commencing on the 1st day of January of each calendar year and ending on 31st day of December of the same calendar year.

## PART 2 — ASSOCIATION TO BE NOT FOR PROFIT BODY

### 4. Not-for-profit body

- (1) The property and income of the Company must be applied solely towards the promotion of the objects or purposes of the Company and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any member, except in good faith in the promotion of those objects or purposes.
- (2) A payment may be made to a member out of the funds of the Company only if it is authorised under subrule (3).
- (3) A payment to a member out of the funds of the Company is authorised if it is —
  - (a) the payment in good faith to the member as reasonable remuneration for any services provided to the Company, or for goods supplied to the Company, in the ordinary course of business;
  - (b) the payment of interest, on money borrowed by the Company from the member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia;
  - (c) the payment of reasonable rent to the member for premises leased by the member to the Company; or
  - (d) the reimbursement of reasonable expenses properly incurred by the member on behalf of the Company.
- (4) The principal purpose of the Company is to advance culture and promote performing arts for the public benefit by —
  - (a) being a first-class flagship arts company;
  - (b) ensuring the Company is secure and sustainable so that it can play its full part in achieving a vibrant and diverse cultural landscape for the benefit of future generations of Western Australians;
  - (c) positioning itself as Australia's most innovative and dynamic ballet company by presenting a diverse repertoire in fresh and original ways;
  - (d) working closely with government, corporate partners and private supporters to maximise its relevance as a highly valued and sought after cultural and economic asset;
  - (e) offering ballet that is benchmarked to an international level that inspires our communities and continually develops the art form; and
  - (f) doing all other things as may be incidental or ancillary to the attainment or progression of the above objects.

## **PART 3 — MEMBERS**

### **Division 1 — Membership**

#### **5. Eligibility for membership**

- (1) Any person who supports the objects or purposes of the Company is eligible to apply to become a member.
- (2) An individual who has not reached the age of 16 years is not eligible to apply for a class of membership that confers full voting rights.

#### **6. Applying for membership**

- (1) A person who wants to become a member must apply in writing to the Company.
- (2) Applications for membership must be made in writing on the prescribed form and delivered to the Company. Except as otherwise provided in this Constitution, membership will run for a period of TWELVE (12) months from the 1st day of January in each year, subject to payment of the applicable annual subscription fee (if any).
- (3) The applicant must specify in the application the class of membership, if there is more than one, to which the application relates.

#### **7. Dealing with membership applications**

- (1) The Board, or a representative appointed by the Board, must consider each application for membership of the Company and decide whether to accept or reject the application.
- (2) Subject to subrule (3), the Board, or a representative appointed by the Board, must consider applications in the order in which they are received by the Company.
- (3) The Board may delay its consideration of an application if the Board considers that any matter relating to the application needs to be clarified by the applicant or that the applicant needs to provide further information in support of the application.
- (4) The Board must not accept an application unless the applicant —
  - (a) is eligible under rules 5 and 9; and
  - (b) has applied under rule 6 and in accordance with rule 9.
- (5) The Board may reject an application even if the applicant —
  - (a) is eligible under rules 5 and 9; and
  - (b) has applied under rule 6 and in accordance with rule 9.
- (6) The Board must notify the applicant of the Board's decision to accept or reject the application as soon as practicable after making the decision.
- (7) If the Board rejects the application, the Board is not required to give the applicant its reasons for doing so.

#### **8. Becoming a member**

- (1) An applicant for membership of the Company becomes a member when —

- (a) the Board accepts the application; and
  - (b) the applicant pays any membership fees payable to the Company under rule 13.
- (2) Subject to the remainder of this Constitution:
  - (a) Ordinary Members as at the date of adoption of this Constitution will continue as Ordinary Members for the remainder of the current calendar year; and
  - (b) Honorary Life Members as at the date of adoption of this Constitution will continue as Honorary Life Members.

## 9. Classes of membership

- (1) At the date of adoption of this Constitution, the Company has the following classes of membership —
  - (a) Ordinary Members; and
  - (b) Honorary Life Members.
- (2) Ordinary Members are those persons invited by the Directors, in their absolute discretion, and who accept the appointment by completing and signing a written application for membership and paying the annual subscription fee for Ordinary Members.
- (3) Honorary Life Members are those persons elected by an ordinary resolution at a general meeting on the recommendation of the Board for outstanding service to the Company, such recommendation to state the reasons prompting its submission.
- (4) The Directors may create any other class of associate membership with specified rights or privileges approved by the Board.
- (5) A person may belong to more than one class of membership.
- (6) Where a person belongs to more than one classes of membership, they may only exercise voting rights associated with one class.
- (7) Subject to subrule (4), members are entitled to all the rights and privileges of membership of the Company, which includes the rights and privileges conferred on members by —
  - (a) law;
  - (b) this Constitution;
  - (c) approval of a resolution of the Company in general meeting; and
  - (d) determinations of the Board from time to time.
- (8) Except to the extent provided in this Constitution to the contrary, the rights and privileges of members of each class of membership are the same.
- (9) The number of members of any class is not limited unless otherwise approved by resolution at a general meeting.

## 10. When membership ceases

- (1) A person ceases to be a member when any of the following takes place —
  - (a) for a member who is an individual, the individual dies;
  - (b) the person resigns from the Company under rule 11;
  - (c) the person is expelled from the Company under rule 16; or
  - (d) the person ceases to be a member under rule 13(5).
- (2) As soon as practicable after the receipt or deemed receipt of member's notice of resignation the Company must remove the name of the relevant member from the register of members.

## 11. Resignation

- (1) A member may resign from membership by giving the Company written notice of the resignation.
- (2) The resignation takes effect —
  - (a) when the Secretary or delegated person receives the notice; or
  - (b) if a later time is stated in the notice, at that later time.

## 12. Rights not transferable

The rights of a member are not transferable and end when membership ceases.

# Division 2 — Membership fees

## 13. Membership fees

- (1) The Board must determine —
  - (a) the entrance fee (if any);
  - (b) the annual membership fee (if any); and
  - (c) the frequency and due date of subscription payments,to be paid for membership of the Company.
- (2) The fees determined under subrule (1) may be different for different classes of membership.
- (3) No annual membership fee is payable by Honorary Life Members.
- (4) A member must pay the annual membership fee to any person authorised by the Board to accept payments, by the date (the **due date**) determined by the Board.
- (5) If a member has not paid the annual membership fee within the period of SIXTY (60) days after the due date, the member ceases to be a member on the expiry of that period.
- (6) If a person who has ceased to be a member under subrule (4) offers to pay the annual membership fee after the period referred to in that subrule has expired —

- (a) the Board may, at its discretion, accept that payment; and
  - (b) if the payment is accepted, the person's membership is reinstated from the date the payment is accepted.
- (7) No resigning member will be entitled to reimbursement of their annual subscription fee either in whole or in part.

### **Division 3 — Register of members**

#### **14. Register of members**

- (1) The Secretary, or another person authorised by the Board, is responsible for the requirements imposed on the Company under section 53 of the Act to maintain the register of members and record in that register any change in the membership of the Company.
- (2) In addition to the matters referred to in section 53(2) of the Act, the register of members must include the class of membership (if applicable) to which each member belongs and the date on which each member becomes a member.
- (3) The register of members must be kept at the Secretary's place of residence, or at another place determined by the Board.
- (4) A member who wishes to inspect the register of members must contact the Secretary to make the necessary arrangements.
- (5) If —
  - (a) a member inspecting the register of members wishes to make a copy of, or take an extract from, the register under section 54(2) of the Act; or
  - (b) a member makes a written request under section 56(1) of the Act to be provided with a copy of the register of members,

the Board may require the member to provide a statutory declaration setting out the purpose for which the copy or extract is required and declaring that the purpose is connected with the affairs of the Company.

## PART 4 — DISCIPLINARY ACTION, DISPUTES AND MEDIATION

### Division 1 — Term used

#### 15. Term used: member

In this Part —

**member**, in relation to a member who is expelled from the Company, includes a former member.

### Division 2 — Disciplinary action

#### 16. Suspension or expulsion

- (1) The Board may decide to suspend a member's membership or to expel a member from the Company if —
  - (a) the member contravenes any of this Constitution; or
  - (b) the member acts detrimentally to the interests of the Company.
- (2) The Secretary must give the member written notice of the proposed suspension or expulsion at least SEVEN (7) days before the Board meeting at which the proposal is to be considered by the Board.
- (3) The notice given to the member must state —
  - (a) when and where the Board meeting is to be held; and
  - (b) the grounds on which the proposed suspension or expulsion is based; and
  - (c) that the member, or the member's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the proposed suspension or expulsion.
- (4) At the Board meeting, the Board must —
  - (a) give the member, or the member's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the proposed suspension or expulsion; and
  - (b) give due consideration to any submissions so made; and
  - (c) decide —
    - (i) whether or not to suspend the member's membership and, if the decision is to suspend the membership, the period of suspension; or
    - (ii) whether or not to expel the member from the Company.
- (5) A decision of the Board to suspend the member's membership or to expel the member from the Company takes immediate effect.
- (6) The Board must give the member written notice of the Board's decision, and the reasons for the decision, within SEVEN (7) days after the Board meeting at which the decision is made.

- (7) A member whose membership is suspended or who is expelled from the Company may, within FOURTEEN (14) days after receiving notice of the Board's decision under subrule (6), give written notice to the Secretary requesting the appointment of a mediator under rule 24.
- (8) If notice is given under subrule (7), the member who gives the notice and the Board are the parties to the mediation.

## 17. Consequences of suspension

- (1) During the period a member's membership is suspended, the member —
  - (a) loses any rights (including voting rights) arising as a result of membership; and
  - (b) is not entitled to a refund, rebate, relief or credit for membership fees paid, or payable, to the Company.
- (2) When a member's membership is suspended, the Secretary must record in the register of members —
  - (a) that the member's membership is suspended;
  - (b) the date on which the suspension takes effect; and
  - (c) the period of the suspension.
- (3) When the period of the suspension ends, the Secretary must record in the register of members that the member's membership is no longer suspended.

## Division 3 — Resolving disputes

### 18. Terms used

In this Division —

***grievance procedure*** means the procedures set out in this Division;

***party to a dispute*** includes a person —

- (a) who is a party to the dispute; and
- (b) who ceases to be a member within 6 months before the dispute has come to the attention of each party to the dispute.

### 19. Application of Division

The procedure set out in this Division (the grievance procedure) applies to disputes —

- (a) between members; or
- (b) between one or more members and the Company.

### 20. Parties to attempt to resolve dispute

The parties to a dispute must attempt to resolve the dispute between themselves within FOURTEEN (14) days after the dispute has come to the attention of each party.

## **21. How grievance procedure is started**

- (1) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 20, any party to the dispute may start the grievance procedure by giving written notice to the Secretary of —
  - (a) the parties to the dispute; and
  - (b) the matters that are the subject of the dispute.
- (2) Within TWENTY EIGHT (28) days after the Secretary is given the notice, a Board meeting must be convened to consider and determine the dispute.
- (3) The Secretary must give each party to the dispute written notice of the Board meeting at which the dispute is to be considered and determined at least SEVEN (7) days before the meeting is held.
- (4) The notice given to each party to the dispute must state —
  - (a) when and where the Board meeting is to be held; and
  - (b) that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute.
- (5) If —
  - (a) the dispute is between one or more members and the Company; and
  - (b) any party to the dispute gives written notice to the Secretary stating that the party —
    - (i) does not agree to the dispute being determined by the Directors; and
    - (ii) requests the appointment of a mediator under rule 24,

the Board must not determine the dispute.

## **22. Determination of dispute by Board**

- (1) At the Board meeting at which a dispute is to be considered and determined, the Directors must —
  - (a) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute; and
  - (b) give due consideration to any submissions so made; and
  - (c) determine the dispute.
- (2) The Board must give each party to the dispute written notice of the Board's determination, and the reasons for the determination, within SEVEN (7) days after the Board meeting at which the determination is made.
- (3) A party to the dispute may, within FOURTEEN (14) days after receiving notice of the Board's determination under subrule (1)(c), give written notice to the Secretary requesting the appointment of a mediator under rule 24.
- (4) If notice is given under subrule (3), each party to the dispute is a party to the mediation.

## **Division 4 — Mediation**

### **23. Application of Division**

- (1) This Division applies if written notice has been given to the Secretary requesting the appointment of a mediator —
  - (a) by a member under rule 16(7); or
  - (b) by a party to a dispute under rule 21(5)(b)(ii) or 22(3).
- (2) If this Division applies, a mediator must be chosen or appointed under rule 24.

### **24. Appointment of mediator**

- (1) The mediator must be a person chosen —
  - (a) if the appointment of a mediator was requested by a member under rule 16(7) — by agreement between the member and the Board; or
  - (b) if the appointment of a mediator was requested by a party to a dispute under rule 21(5)(b)(ii) or 22(3) — by agreement between the parties to the dispute.
- (2) If there is no agreement for the purposes of subrule (1)(a) or (b), then, subject to subrules (3) and (4), the Board must appoint the mediator.
- (3) The person appointed as mediator by the Board must be a person who acts as a mediator for another not-for-profit body, such as a community legal centre, if the appointment of a mediator was requested by —
  - (a) a member under rule 16(7); or
  - (b) a party to a dispute under rule 21(5)(b)(ii); or
  - (c) a party to a dispute under rule 22(3) and the dispute is between one or more members and the Board.
- (4) The person appointed as mediator by the Board may be a member or former member of the Company but must not —
  - (a) have a personal interest in the matter that is the subject of the mediation; or
  - (b) be biased in favour of or against any party to the mediation.

### **25. Mediation process**

- (1) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- (2) Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least FIVE (5) days before the mediation takes place.
- (3) In conducting the mediation, the mediator must —
  - (a) give each party to the mediation every opportunity to be heard; and
  - (b) allow each party to the mediation to give due consideration to any written statement given by another party; and

- (c) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- (4) The mediator cannot determine the matter that is the subject of the mediation.
- (5) The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.
- (6) The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.

## **26. If mediation results in decision to suspend or expel being revoked**

If —

- (a) mediation takes place because a member whose membership is suspended or who is expelled from the Company gives notice under rule 16(7); and
- (b) as the result of the mediation, the decision to suspend the member's membership or expel the member is revoked,

that revocation does not affect the validity of any decision made at a Board meeting or general meeting during the period of suspension or expulsion.

## PART 5 — BOARD

### Division 1 — Powers of Board

#### 27. Board

- (1) The Directors are the persons who, as the Board of the Company, have the power to manage the affairs of the Company.
- (2) Subject to the Act, this Constitution, the By-laws (if any) and any resolution passed at a general meeting, the Board has power to do all things necessary or convenient to be done for the proper management of the affairs of the Company.
- (3) The Board must take all reasonable steps to ensure that the Company complies with the Act, this Constitution and the By-laws (if any).

#### 28. Indemnity

Every Director and officer of the Company must be indemnified against, and the Board must pay out of the funds of the Company, all disbursements, liabilities, costs, losses and expenses which a Director or officer may incur or become liable for by reason of any authorised contract or liability entered into or act or thing done or omitted to be done by any of them in the lawful and proper discharge of their duties.

#### 29. Procedural irregularity

- (1) In this rule 29 —  
***procedural irregularity*** has the meaning given to that term in Section 1322(1)(b) of the *Corporations Act 2001* (Cth).
- (2) The action(s) of the Board or of the members of the Company in a general meeting will not be invalidated because of any procedural irregularity unless the Supreme Court of Western Australia is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any other order of the Court and by order declares the action(s) to be invalid.
- (3) Sections 1322(3), 1322(4), 1322(5) and 1322(6) of the *Corporations Act 2001* (Cth) are incorporated into and form part of this Constitution but are modified so that —
  - (a) a reference to ‘this Act’ will be deemed to be a reference to ‘the Act’; and
  - (b) a reference to ‘a corporation’ will be deemed to be a reference to ‘the Company’

### Division 2 — Composition of Board and duties of Directors

#### 30. Directors

- (1) The Directors consist of —
  - (a) the office holders of the Company; and
  - (b) at least one Ordinary Director.
- (2) The maximum number of Directors is TEN (10).
- (3) The following are the office holders of the Company —

- (a) the Chairperson; and
  - (b) the Deputy Chairperson.
- (4) The Board must appoint an officer or officers of the Company who will fulfil the requirements allocated within this Constitution to the Secretary.
- (5) At least FIVE (5) Directors must have skills and experience in one or more of the following disciplines or professions —
- (a) business management;
  - (b) marketing, sponsorship or fund raising;
  - (c) accounting and financial;
  - (d) legal; or
  - (e) the performing arts.
- (6) Subject to sections 39 and 40 of the Act, a person may be nominated or appointed as a Director if the person is —
- (a) an individual who has reached EIGHTEEN (18) years of age; and
  - (b) a member.
- (7) No person who is a full or part-time employee of the Company is eligible to be appointed or remain a Director.
- (8) A person must not hold both of the offices mentioned in subrule (3) at the same time.
- (9) The Board may from time to time, subject to the maximum number specified in subrule (2), determine the number of Directors to constitute the Board which, as at the date of this Constitution, is TEN (10).

### **31. Non-voting Directors**

- (1) The Board may from time to time request that a member act as a Non-voting Director of the Company to provide special expertise or advice in relation to a particular issue or project in furtherance of the objects of the Company.
- (2) A member who —
- (a) is requested by the Directors to act as a Non-voting Director in accordance with subrule (1); and
  - (b) consents to acting as a Non-voting Director,
- will become a Non-voting Director for such time as the Board determines, but that time must not exceed TWELVE (12) months.
- (3) A Non-voting Director must attend any meetings of the Board that the Board requests.
- (4) A Non-voting Director —
- (a) may not vote at any Board meeting;

- (b) will not be counted as a Director for the purposes of determining the maximum number of Directors in rule 30(2); and
  - (c) will not be counted for the purposes of establishing a quorum under rule 48.
- (5) No more than one Non-voting Director may be appointed at any time.
  - (6) A Non-voting Director must satisfy the criteria in rule 30(6).

### **32. Chairperson**

- (1) It is the duty of the Chairperson to consult with the Secretary regarding the business to be conducted at each Board meeting and general meeting.
- (2) The Chairperson has the powers and duties relating to convening and presiding at Board meetings and presiding at general meetings provided for in this constitution.

### **33. Secretary**

The Secretary has the following duties —

- (a) co-ordinating the Company's correspondence;
  - (b) consulting with the Chairperson regarding the business to be conducted at each Board meeting and general meeting;
  - (c) preparing the notices required for meetings and for the business to be conducted at meetings;
  - (d) unless another member is authorised by the Board to do so, maintaining on behalf of the Company the register of members, and recording in the register any changes in the membership, as required under section 53(1) of the Act;
  - (e) maintaining on behalf of the Company an up-to-date copy of this Constitution, as required under section 35(1) of the Act;
  - (f) unless another member is authorised by the Board to do so, maintaining on behalf of the Company a record of Directors, office holders, trustees and other persons authorised to act on behalf of the Company, as required under section 58(2) of the Act;
  - (g) ensuring the safe custody of the books, documents, records and registers of the Company, other than the financial records, financial statements and financial reports, as applicable to the Company;
- maintaining full and accurate minutes of Board meetings and general meetings; and
- (h) carrying out any other duty given to the Secretary under this Constitution or by the Board.

## **Division 3 — Election of Directors and tenure of office**

### **34. How members become Directors**

A member becomes a Director if the member —

- (a) is elected to the Board at a general meeting; or
- (b) is appointed to the Board by the Board to fill a casual vacancy under rule 41.

### **35. Nomination of Directors**

- (1) A member who wishes to be considered for election to the Board at the annual general meeting must nominate for election by sending written notice of the nomination, and specifying the discipline or profession described in rule 30(5) (if any) that the nominee represents, to the Secretary at least FOURTEEN (14) days before the annual general meeting.
- (2) The written notice must be signed by a proposer and seconder both of whom must be members, and by the nominee, and must be in the form prescribed by the Board as shown in Appendix B, or such other form as approved by the Board from time to time.
- (3) A member may nominate for a specified position of office holder of the Company or to be an Ordinary Director.
- (4) A member whose nomination does not comply with this rule is not eligible for election to the Board unless the member is nominated under rule 37(2) or 38(2)(b).
- (5) The names of the nominees and a short profile of them, indicating the discipline (if any) for which they are nominated, together with the proposers and seconds shall be sent to all members not less than SEVEN (7) days before the Annual General Meeting;

### **36. Election of office holders**

- (1) At the annual general meeting, a separate election must be held for each vacant position of office holder of the Company.
- (2) If there is no nomination for a position, the Directors must nominate other persons for election to fill the vacancies.
- (3) If only one member has nominated for a position, and the member consents to acting in that position, the Chairperson of the meeting must declare the member elected to the position. The result of the election for Chairperson, followed by Deputy Chairperson if applicable, must be determined before that of the other Directors. If more than one member has nominated for a position, and those members consent to acting in that position, the members (other than Non-voting Members) at the meeting must vote in accordance with procedures that have been determined by the Board to decide who is to be elected to the position.
- (4) Each member (other than a Non-voting Member) present at the meeting may vote for one member who has nominated for the position.
- (5) A member (other than a Non-voting Member) who has nominated for the position may vote for himself or herself.

### **37. Election of Directors**

- (1) A minimum of TWO (2) Directors must retire from office at each annual general meeting. The Directors to retire will be first, any person appointed pursuant to rule 41 since the previous annual general meeting to fill a casual vacancy, second any person appointed pursuant to rule 39(3), and then those who have been longest in office since their last appointment or election. As between TWO (2) or more who became or were last re-elected Directors on the same day those to retire will (in default of agreement between them) be determined by lot.
- (2) If the number of members nominating for the position of Director is not greater than the number to be elected, the Chairperson of the meeting —
  - (a) must declare each of those members to be elected to the position; and

- (b) may call for further nominations from the members at the meeting to fill any positions remaining unfilled after the elections under paragraph (a).
- (3) If —
  - (a) the number of members nominating for the position of Director is greater than the number to be elected; or
  - (b) the number of members nominating under subrule (2)(b) is greater than the number of positions remaining unfilled,

the members (other than Non-voting Members) at the meeting must vote in accordance with procedures that have been determined by the Board to decide the members who are to be elected to the position of Ordinary Director.
- (4) A member (other than a Non-voting Member) who has nominated for the position of Director may vote for himself or herself.

### **38. Term of office**

- (1) The term of office of a Director begins when the member —
  - (a) is elected at an annual general meeting or under subrule 39(3)(b); or
  - (b) is appointed to fill a casual vacancy under rule 41.
- (2) No Director may remain in office for more than THREE (3) years without submitting for re-election. Subject to the Board's discretion in the case of the Chairperson, no Director may remain in office for a consecutive period of more than NINE (9) years. The Board may determine in its absolute discretion that this provision does not apply to the Chairperson but, in exercising this discretion, the Board may only extend the Chairperson's term for an additional period not exceeding THREE (3) years, and subject to such other terms and conditions as it sees fit.
- (3) A Director may be re-elected.
- (4) A retiring Director remains in office until the conclusion of the annual general meeting at which that Director retires.

### **39. Resignation and removal from office**

- (1) A Director may resign from the Board by written notice given to the Secretary or Chairperson.
- (2) The resignation takes effect —
  - (a) when the notice is received by the Secretary or Chairperson; or
  - (b) if a later time is stated in the notice, at the later time.
- (3) At a general meeting, the Company may by resolution —
  - (a) remove a Director from office; and
  - (b) elect a member who is eligible under rule 30(5), 30(6) and 30(7) to fill the vacant position.
- (4) A Director who is the subject of a proposed resolution under subrule (3)(a) may make written representations (of a reasonable length) to the Secretary or Chairperson and may ask that the representations be provided to the members.
- (5) The Secretary or Chairperson may give a copy of the representations to each member or, if they are not so given, the Director may require them to be read out at the general

meeting at which the resolution is to be considered.

#### **40. When Board membership ceases**

A person ceases to be Director if the person —

- (a) dies or otherwise ceases to be a member;
- (b) resigns by notice in writing delivered to the Company or is removed from office under rule 39;
- (c) becomes ineligible to accept an appointment or act as a Director under section 38 of the Act;
- (d) becomes permanently unable to act as a Director because of a mental or physical disability; or
- (e) fails to attend THREE (3) Board meetings in the same financial year, of which the person has been given notice, without tendering an apology to the person presiding at each of those meetings, and the Board has resolved to declare the office vacant.

#### **41. Filling casual vacancies**

- (1) The Board may appoint a member who is eligible under rules 30(5) and 30(6) to fill a position on the Board that —
  - (a) has become vacant under rule 40; or
- (2) was not filled by election at the most recent annual general meeting or under rule 39(3)(b). If the position of Secretary becomes vacant, the Board must appoint a member who is eligible under rule 30(5) and 30(6) to fill the position within FOURTEEN (14) days after the vacancy arises.
- (3) Subject to the requirement for a quorum under rule 48, the Board may continue to act despite any vacancy in its membership.
- (4) If there are fewer Directors than required for a quorum under rule 48, the Board may act only for the purpose of —
  - (a) appointing Directors under this rule; or
  - (b) convening a general meeting.

#### **42. Validity of acts**

The acts of the Board or a subcommittee, or of a Director or member of a subcommittee, are valid despite any defect that may afterwards be discovered in the election, appointment or qualification of a Director or member of a subcommittee.

#### **43. Payments to Directors**

A Director may be entitled to be paid out of the funds of the Company for out-of-pocket expenses for travel and accommodation properly incurred in connection with the Company's business. Such entitlement is at the absolute discretion of the Board.

### **Division 4 — Board meetings**

#### **44. Board meetings**

- (1) The Board must meet at least SIX (6) times in each year on the dates and at the times

and places determined by the Board.

- (2) The date, time and place of the first Board meeting must be determined by the Directors as soon as practicable after the annual general meeting at which the Directors are elected.
- (3) Special Board meetings may be convened by the Chairperson or at the request of any TWO (2) Directors.

#### **45. Notice of Board meetings**

- (1) Notice of each Board meeting must be given to each Director at least FORTY EIGHT (48) hours before the time of the meeting, unless the notice period is waived by not less than SIX (6) Directors.
- (2) The notice must state the date, time and place of the meeting and must describe the general nature of the business to be conducted at the meeting.
- (3) Unless subrule (4) applies, the only business that may be conducted at the meeting is the business described in the notice.
- (4) Urgent business that has not been described in the notice may be conducted at the meeting if the Directors at the meeting unanimously agree to treat that business as urgent.

#### **46. Procedure and order of business**

- (1) The Chairperson or, in the Chairperson's absence, the Deputy Chairperson must preside as Chairperson of each Board meeting. If the Chairperson and Deputy Chairperson are absent or are unwilling to act as Chairperson of a meeting, the Directors at the meeting must choose one of them to act as Chairperson of the meeting.
- (2) The procedure to be followed at a Board meeting must be determined from time to time by the Board.
- (3) The order of business at a Board meeting may be determined by the Directors at the meeting.
- (4) A member or other person who is not a Director may attend a Board meeting if invited to do so by the Board.
- (5) A person invited under subrule (5) to attend a Board meeting —
  - (a) has no right to any agenda, minutes or other document circulated at the meeting;
  - (b) must not comment about any matter discussed at the meeting unless invited by the Board to do so; and
  - (c) cannot vote on any matter that is to be decided at the meeting.

#### **47. Use of technology to be present at Board meetings**

- (1) The presence of a Director at a Board meeting need not be by attendance in person but may be by that Director and each other Director at the meeting being simultaneously in contact by telephone or other means of instantaneous communication, including a combination of different means of instantaneous communication.
- (2) A Director who participates in a Board meeting as allowed under subrule (1) is taken to be present at the meeting and, if the Director votes at the meeting, the Director is taken to have voted in person.

#### **48. Quorum for Board meetings**

- (1) The quorum for a Board meeting is FOUR (4) Directors.
- (2) Subject to rule 41(4), no business is to be conducted at a Board meeting unless a quorum is present.
- (3) If a quorum is not present within THIRTY (30) minutes after the notified commencement time of a Board meeting —
  - (a) in the case of a special meeting — the meeting lapses; or
  - (b) otherwise, the meeting is adjourned and may be reconvened to a time and place notified in accordance with rule 45.
- (4) If —
  - (a) a quorum is not present within THIRTY (30) minutes after the commencement time of a Board meeting held under subrule (3)(b); and
  - (b) at least TWO (2) Directors are present at the meeting, those Directors present are taken to constitute a quorum.

#### **49. Voting at Board meetings**

- (1) Each Director present at a Board meeting has one vote on any question arising at the meeting.
- (2) A motion is carried if a majority of the Directors present at the Board meeting vote in favour of the motion.
- (3) If the votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- (4) A vote may take place by the Directors present indicating their agreement or disagreement or by a show of hands, unless the Board decides that a secret ballot is needed to determine a particular question.
- (5) If a secret ballot is needed, the Chairperson of the meeting must decide how the ballot is to be conducted.
- (6) A Director, an officer of the Company and any other person attending a meeting of the Board, who has any direct or indirect pecuniary interest in any contract, proposed contract or other matter for the purposes of sections 42 or 43 of the Act must comply with those sections.
- (7) Subject to this Constitution, a written resolution signed by more than half of the total number of Directors will be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution —
  - (a) may consist of several documents in like form each signed by one or more Directors; and
  - (b) will be effective from the date the last of the relevant Directors has signed the resolution.

#### **50. Minutes of Board meetings**

- (1) The Board must ensure that minutes are taken and kept of each Board meeting.
- (2) The minutes must record the following —
  - (a) the names of the Directors present at the meeting;
  - (b) the name of any person attending the meeting under rule 46(5);
  - (c) the business considered at the meeting;
  - (d) any motion on which a vote is taken at the meeting and the result of the vote;  
and
  - (e) any matter required by section 42(6) of the Act to be recorded.
- (3) The minutes of a Board meeting must be recorded as a formal Company record within THIRTY (30) days after the meeting is held.
- (4) The Chairperson must ensure that the minutes of a Board meeting are reviewed and signed as correct by —
  - (a) the Chairperson of the meeting; or
  - (b) the Chairperson of the next Board meeting.
- (5) When the minutes of a Board meeting have been signed as correct they are, until the contrary is proved, evidence that —
  - (a) the meeting to which the minutes relate was duly convened and held;
  - (b) the matters recorded as having taken place at the meeting took place as recorded; and
  - (c) any appointment purportedly made at the meeting was validly made.

## **Division 5 — Subcommittees and subsidiary offices**

### **51. Subcommittees and subsidiary offices**

- (1) To help the Board in the conduct of the Company's business, the Board may, in writing, do either or both of the following —
  - (a) appoint one or more subcommittees;
  - (b) create one or more subsidiary offices and appoint people to those offices.
- (2) A subcommittee may consist of the number of people, whether or not members, that the Board considers appropriate.
- (3) A person may be appointed to a subsidiary office whether or not the person is a member.
- (4) Subject to any directions given by the Board —
  - (a) the chair of a subcommittee will report to the Board on the activities of the subcommittee after every meeting of the subcommittee, or otherwise not less than once every TWO (2) months;
  - (b) a subcommittee may meet and conduct business as it considers appropriate; and
  - (c) the holder of a subsidiary office may carry out the functions given to the holder as the holder considers appropriate.

## 52. Delegation to subcommittees and holders of subsidiary offices

- (1) In this rule —

***non-delegable duty*** means a duty imposed on the Board by the Act or another written law.

- (2) The Board may, in writing, delegate to a subcommittee or the holder of a subsidiary office the exercise of any power or the performance of any duty of the Board other than —
- (a) the power to delegate; and
  - (b) a non-delegable duty.
- (3) A power or duty, the exercise or performance of which has been delegated to a subcommittee or the holder of a subsidiary office under this rule, may be exercised or performed by the subcommittee or holder in accordance with the terms of the delegation.
- (4) The delegation may be made subject to any conditions, qualifications, limitations or exceptions that the Board specifies in the document by which the delegation is made.
- (5) The delegation does not prevent the Board from exercising or performing at any time the power or duty delegated.
- (6) Any act or thing done by a subcommittee or by the holder of a subsidiary office, under the delegation has the same force and effect as if it had been done by the Board.
- (7) The Board may, in writing, amend or revoke the delegation.

## **PART 6 — GENERAL MEETINGS OF COMPANY**

### **53. Annual general meeting**

- (1) The Board must determine the date, time and place of the annual general meeting.
- (2) The annual general meeting must be held within SIX (6) months of the end of the Company's financial year.
- (3) The ordinary business of the annual general meeting is as follows —
  - (a) to confirm the minutes of the previous annual general meeting and of any special general meeting held since then if the minutes of that meeting have not yet been confirmed;
  - (b) to receive and consider —
    - (i) the Board's annual report on the Company's activities during the preceding financial year;
    - (ii) the financial report of the Company for the preceding financial year presented under Part 5 of the Act; and
    - (iii) if required to be presented for consideration under Part 5 of the Act, a copy of the report of the review or auditor's report on the financial statements or financial report;
  - (c) to elect the office holders of the Company and other Directors to fill any vacancies from those candidates nominated in accordance with rule 35; and
  - (d) if applicable, to appoint or remove a reviewer or auditor of the Company in accordance with the Act.
- (4) Any other business of which notice has been given in accordance with this Constitution may be conducted at the annual general meeting.

### **54. Special general meetings**

- (1) The Board may convene a special general meeting.
- (2) The Board must convene a special general meeting if at least 20% of the members require a special general meeting to be convened.
- (3) The members requiring a special general meeting to be convened must —
  - (a) make the requirement by written notice given to the Secretary;
  - (b) state in the notice the business to be considered at the meeting; and
  - (c) each sign the notice.
- (4) The special general meeting must be convened within TWENTY EIGHT (28) days after notice is given under subrule (3)(a).
- (5) If the Board does not convene a special general meeting within that TWENTY EIGHT (28) day period, the members making the requirement (or any of them) may convene the special general meeting.
- (6) A special general meeting convened by members under subrule (5) —

- (a) must be held within THREE (3) months after the date the original requirement was made; and
  - (b) may only consider the business stated in the notice by which the requirement was made.
- (7) The Company must reimburse any reasonable expenses incurred by the members convening a special general meeting under subrule (5).

## 55. Notice of general meetings

- (1) The Secretary or, in the case of a special general meeting convened under rule 54(5), the members convening the meeting, must give to each member —
- (a) at least TWENTY ONE (21) days' notice of a general meeting, other than an annual general meeting, if a special resolution is to be proposed at the meeting;
  - (b) at least TWENTY EIGHT (28) days' notice if the meetings is an annual general meeting; or
  - (c) at least FOURTEEN (14) days' notice of a general meeting in any other case.
- (2) The notice must —
- (a) specify the date, time and place of the meeting;
  - (b) indicate the general nature of each item of business to be considered at the meeting;
  - (c) if the meeting is the annual general meeting, include the names of the members who have nominated for election to the Board under rule 35(1); and
  - (d) if a special resolution is proposed —
    - (i) set out the wording of the proposed resolution as required by section 53(4) of the Act;
    - (ii) state that the resolution is intended to be proposed as a special resolution; and
    - (iii) comply with rule 56(6).

## 56. Proxies

- (1) Subject to subrule (2), a member entitled to attend and vote at a general meeting may appoint an individual who is a member (other than a Non-voting Member) as his or her proxy to vote and speak on his or her behalf at a general meeting.
- (2) A member (other than a Non-voting Member) may be appointed the proxy for not more than FIVE (5) other members.
- (3) The appointment of a proxy must be in writing in the form of Appendix A, or such other form as approved by the Board from time to time, and signed by the member making the appointment.
- (4) The member appointing the proxy may give specific directions as to how the proxy is to vote on his or her behalf.
- (5) If no instructions are given to the proxy, the proxy may vote on behalf of the member in any matter as the proxy sees fit.
- (6) Notice of a general meeting given to a member under rule 55 must —

- (a) state that a member (other than a Non-voting Member) may appoint an individual who is a member (other than a Non-voting Member) as a proxy for the meeting; and
  - (b) include a copy of any form that the Board has approved for the appointment of a proxy.
- (7) A form appointing a proxy must be given to the Secretary before the commencement of the general meeting for which the proxy is appointed.
- (8) A form appointing a proxy sent by post or electronically is of no effect unless it is received by the Company not later than FORTY-EIGHT (48) hours before the commencement of the meeting.

#### **57. Use of technology to be present at general meetings**

- (1) The presence of a member at a general meeting need not be by attendance in person but may be by that member and each other member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication, including a combination of different means of instantaneous communication.
- (2) A member who participates in a general meeting as allowed under subrule (1) is taken to be present at the meeting and, if the member votes at the meeting, the member is taken to have voted in person.

#### **58. Presiding member and quorum for general meetings**

- (1) The Chairperson or, in the Chairperson's absence, the Deputy Chairperson must preside as Chairperson of each general meeting.
- (2) If the Chairperson and Deputy Chairperson are not present within FIFTEEN (15) minutes after the time appointed for the holding of the meeting, or are unwilling to act as Chairperson of a general meeting, the Directors at the meeting must choose one of them to act as Chairperson of the meeting.
- (3) No business is to be conducted at a general meeting unless a quorum of TWELVE (12) members (other than Non-voting Members) is present in person or by proxy.
- (4) If a quorum is not present within THIRTY (30) minutes after the notified commencement time of a general meeting —
  - (a) in the case of a special general meeting — the meeting lapses; or
  - (b) in the case of the annual general meeting — the meeting is adjourned to such time and place as the Board may decide and which the Chairperson specifies at the time of the adjournment or provides written notice of another place before the day to which the meeting is adjourned.
- (5) If —
  - (a) a quorum is not present within THIRTY (30) minutes after the commencement time of an annual general meeting held under subrule (4)(b); and
  - (b) at least 2 members (other than Non-voting Members) are present at the meeting,
 those members present are taken to constitute a quorum.

## **59. Adjournment of general meeting**

- (1) The Chairperson of a general meeting at which a quorum is present may, with the consent of a majority of the members (other than Non-voting Members) present at the meeting, adjourn the meeting to another time at the same place or at another place.
- (2) Without limiting subrule (1), a meeting may be adjourned —
  - (a) if there is insufficient time to deal with the business at hand; or
  - (b) to give the members more time to consider an item of business.
- (3) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- (4) Notice of the adjournment of a meeting under this rule is not required unless the meeting is adjourned for THIRTY (30) days or more, in which case notice of the meeting must be given in accordance with rule 55.

## **60. Voting at general meeting**

- (1) On any question arising at a general meeting, subject to subrule (6) —
  - (a) each member (other than Non-voting Members) has one vote; and
  - (b) members (other than Non-voting Members) may vote personally or by proxy.
- (2) Except in the case of a special resolution, a motion is carried if a majority of members (other than Non-voting Members) present and eligible to vote at a general meeting vote in favour of the motion.
- (3) In the case of a special resolution, a motion is carried if it is passed by the votes of not less than three-fourths of the members (other than Non-voting Members) who cast a vote at the meeting.
- (4) If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- (5) If the question is whether or not to confirm the minutes of a previous general meeting, only members (other than Non-voting Members) who were present at that meeting may vote.
- (6) For a person to be eligible to vote at a general meeting, they —
  - (a) must have been a member (other than a Non-voting Member) –
    - (i) for an annual general meeting, at the time notice of the meeting was given under rule 55; and
    - (ii) for any special general meeting, not less than SIXTY (60) days immediately prior to such meeting; and
  - (b) must have paid any fee or other money payable to the Company by the member.

## **61. When special resolutions are required**

- (1) A special resolution is required if it is proposed at a general meeting —
  - (a) to affiliate the Company with another body; or

- (b) to request the Commissioner to apply to the State Administrative Tribunal under section 109 of the Act for the appointment of a statutory manager.
  - (c) to alter the rules of the Company, including changing the name of the Company;
  - (d) to decide to apply for registration or incorporation as a prescribed body corporate;
  - (e) to approve the terms of an amalgamation with one or more other incorporated associations;
  - (f) to be wound up voluntarily or by the Supreme Court;
  - (g) to cancel its incorporation; or
  - (h) to do anything which is required by the Act or any applicable law from time to time to be resolved by way of special resolution.
- (2) Subrule (1) does not limit the matters in relation to which a special resolution may be proposed.

## 62. Determining whether resolution carried

- (1) In this rule —
- poll** means the process of voting in relation to a matter that is conducted in writing.
- (2) Subject to subrule (4), the Chairperson of a general meeting may, on the basis of general agreement or disagreement or by a show of hands, declare that a resolution has been —
- (a) carried;
  - (b) carried unanimously;
  - (c) carried by a particular majority; or
  - (d) lost.
- (3) If the resolution is a special resolution, the declaration under subrule (2) must identify the resolution as a special resolution.
- (4) If a poll is demanded on any question by the Chairperson of the meeting or by at least THREE (3) other members (other than Non-voting Members) present in person or by proxy and eligible to vote —
- (a) the poll must be taken at the meeting in the manner determined by the Chairperson; and
  - (b) the Chairperson must declare the determination of the resolution on the basis of the poll.
- (5) If a poll is demanded on the election of the Chairperson or on a question of an adjournment, the poll must be taken immediately.
- (6) If a poll is demanded on any other question, the poll must be taken before the close of the meeting at a time determined by the Chairperson.
- (7) A declaration under subrule (2) or (4) must be entered in the minutes of the meeting, and the entry is, without proof of the voting in relation to the resolution, evidence of how the resolution was determined.

### 63. Minutes of general meeting

- (1) The Secretary, or a person authorised by the Board from time to time, must take and keep minutes of each general meeting.
- (2) The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- (3) In addition, the minutes of each annual general meeting must record —
  - (a) the names of the members attending the meeting;
  - (b) any proxy forms given to the Secretary of the meeting under rule 56(7);
  - (c) the financial statements or financial report presented at the meeting, as referred to in rule 53(3)(b)(ii); and
  - (d) any report of the review or auditor's report on the financial statements or financial report presented at the meeting, as referred to in rule 53(3)(b)(iii).
- (4) The minutes of a general meeting must be recorded as a formal Company record within THIRTY (30) days after the meeting is held.
- (5) The Chairperson must ensure that the minutes of a general meeting are reviewed and signed as correct by —
  - (a) the Chairperson of the meeting; or
  - (b) the Chairperson of the next general meeting.
- (6) When the minutes of a general meeting have been signed as correct they are, in the absence of evidence to the contrary, taken to be proof that —
  - (a) the meeting to which the minutes relate was duly convened and held;
  - (b) the matters recorded as having taken place at the meeting took place as recorded; and
  - (c) any election or appointment purportedly made at the meeting was validly made.

## **PART 7 — FINANCIAL MATTERS**

### **64. Source of funds**

The funds of the Company may be derived from ticket sales, annual subscriptions, donations, fund-raising activities, grants, interest and any other sources approved by the Board.

### **65. Control of funds**

- (1) The Company must open an account in the name of the Company with a financial institution from which all expenditure of the Company is made and into which all funds received by the Company are deposited.
- (2) Subject to any restrictions imposed at a general meeting, the Board may approve expenditure on behalf of the Company.
- (3) The Board is responsible for the management of the Company's funds and may authorise any person to expend funds on behalf of the Company up to a specified limit without requiring specific approval from the Board for each item on which the funds are expended.
- (4) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the Company must be signed by —
  - (a) TWO (2) Directors;
  - (b) ONE (1) Director and a person authorised by the Board; or
  - (c) any other person or combination of persons authorised by resolution of the Board from time to time, subject to any approval limits or other conditions (whether express or implied) attached to such authority.
- (5) All funds of the Company must be deposited into the Company's account within FIVE (5) working days after their receipt.

### **66. Financial statements and financial reports**

- (1) For each financial year, the Board must ensure that the requirements imposed on the Company under Part 5 of the Act relating to the financial statements or financial report of the Company are met.
- (2) Without limiting subrule (1), those requirements include —
  - (a) the preparation of the financial report;
  - (b) the review or auditing of the financial statements or financial report, as applicable;
  - (c) the presentation to the annual general meeting of the financial statements or financial report; and
  - (d) the presentation to the annual general meeting of the copy of the report of the review or auditor's report, as applicable, on the financial statements or financial report.

## **PART 8 — GENERAL MATTERS**

### **67. By-laws**

- (1) The Company may, by resolution at a general meeting, make, amend or revoke By-laws.
- (2) By-laws may —
  - (a) provide for the rights and obligations that apply to any classes of associate membership approved under rule 9(4);
  - (b) impose restrictions on the Board's powers, including the power to dispose of the Company's assets;
  - (c) impose requirements relating to the financial reporting and financial accountability of the Company and the auditing of the Company's accounts; and
  - (d) provide for any other matter the Company considers necessary or convenient to be dealt with in the By-laws.
- (3) A By-law is of no effect to the extent that it is inconsistent with the Act, the regulations or this Constitution.
- (4) Without limiting subrule (3), a By-law made for the purposes of subrule (2)(c) may only impose requirements on the Company that are additional to, and do not restrict, a requirement imposed on the Company under Part 5 of the Act.
- (5) At the request of a member, the Company must make a copy of the By-laws available for inspection by the member.

### **68. Executing documents and common seal**

- (1) The Company may execute a document without using a common seal if the document is signed —
  - (a) by TWO (2) Directors;
  - (b) by ONE (1) Director and a person authorised by the Board; or
  - (c) in such other manner as the Board determines from time to time, subject to any approval limits or other conditions (whether express or implied) provided by the Board.
- (2) For the common seal —
  - (a) the name of the Company must appear in legible characters on the common seal; and
  - (b) a document may only be sealed with the common seal by the authority of the Board and in the presence of —
    - (i) TWO (2) Directors; or
    - (ii) ONE (1) Director and a person authorised by the Board,and each of them is to sign the document to attest that the document was sealed in their presence.
- (3) The Secretary must make a written record of each use of the common seal.

- (4) The common seal must be kept in the custody of the Secretary or another Director authorised by the Board.

## 69. Giving notices to members

- (1) In this rule —

**business day** means a day that is not a Saturday or a Sunday or a bank or public holiday in the State of Western Australia.

**recorded** means recorded in the register of members.

- (2) A notice or other document that is to be given to a member under this Constitution is taken not to have been given to the member unless it is in writing and —
- (a) delivered by hand, whether to the member personally or to the recorded address of the member;
  - (b) sent by prepaid post to the recorded postal address of the member or such other address notified by the member(s) from time to time;
  - (c) sent by facsimile to a member's facsimile number;
  - (d) sent by electronic transmission to a member's email address; or
  - (e) sent to a member by way of any other form of technology determined by the Board.
- (3) A notice or other document is taken to have been given —
- (a) in the case of a notice or document given in accordance with subrule (2)(a), at the time that it is delivered – unless it is delivered on a day which is not a business day, in which case it will be taken to have been given on the next business day;
  - (b) in the case of a notice or document given in accordance with subrule (2)(b), on the next business day following the day that it is sent;
  - (c) in the case of a notice or document given in accordance with subrule (2)(c), on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error – unless it is delivered at time which is not between 8.30am and 6.00pm on a business day, in which case it will be taken to have been given on the next business day; or
  - (d) in the case of a notice or document given in accordance with subrules (2)(d) or (2)(e), at the time that it is delivered – unless it is delivered at time which is not between 8.30am and 6.00pm on a business day, in which case it will be taken to have been given on the next business day.

## 70. Custody of books and securities

- (1) Subject to subrule (2), the books and any securities of the Company must be kept in the Secretary's custody or under the Secretary's control.
- (2) The financial records and, as applicable, the financial statements or financial reports of the Company must be kept in the Board's custody or under the Board's control.
- (3) Subrules (1) and (2) have effect except as otherwise decided by the Board.
- (4) The books of the Company must be retained for at least SEVEN (7) years.

## **71. Record of office holders**

- (1) The Company must maintain a record of the names and addresses of —
  - (a) any person who —
    - (i) is a member of the Board; or
    - (ii) hold another office of the Company provided for by this Constitution;
  - (b) any person who is authorised to use the common seal of the Company (if it has a common seal); and
  - (c) any person who is appointed or acts as trustee on behalf of the Company.
- (2) The record of Directors and other persons authorised to act on behalf of the Company that is required to be maintained subrule (1) must be kept in the Secretary's custody or under the Secretary's control.

## **72. Inspection of records and documents**

- (1) Subrule (2) applies to a member who wants to inspect —
  - (a) the register of members under section 54(1) of the Act;
  - (b) the record of the names and addresses of Directors, and other persons authorised to act on behalf of the Company, under section 58(3) of the Act; or
  - (c) any other record or document of the Company.
- (2) The member must contact the Secretary to make the necessary arrangements for the inspection.
- (3) The inspection under this rule 72 must be free of charge.
- (4) If the member wants to inspect a document that records the minutes of a Board meeting, the right to inspect that document is subject to any decision the Board has made about minutes of Board meetings generally, or the minutes of a specific Board meeting, being available for inspection by members.
- (5) The member may, subject to rule 14(5), make a copy of or take an extract from a record or document referred to in subrule (1)(c) but does not have a right to remove the record or document for that purpose.
- (6) The member must not use or disclose information in a record or document referred to in subrule (1)(c) except for a purpose —
  - (a) that is directly connected with the affairs of the Company; or
  - (b) that is related to complying with a requirement of the Act.

## **73. Publication by Directors of statements about Company business prohibited**

A Director must not publish, or cause to be published, any statement about the business conducted by the Company at a general meeting or Board meeting unless —

- (a) the Director has been authorised to do so at a Board meeting; and
- (b) the authority given to the Director has been recorded in the minutes of the Board meeting at which it was given.

## 74. Distribution of surplus property on cancellation of incorporation or winding up

- (1) In this rule —

**contributions** has the meaning given in Division 30 of the Tax Act.

**Corporations Act** means the *Corporations Act 2001* (Cth) or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or enacted.

**DGR entity** means a deductible gift recipient as that term is defined in the Tax Act.

**fund-raising event** has the meaning given in Division 30 of the Tax Act.

**gift funds means** —

- (a) gifts of money or property for the principal object of the Company;
- (b) contributions made in relation to a fund-raising event held for the principal object of the Company; and
- (c) money received by the Company because of such gifts and contributions.

**surplus property**, in relation to the Company, means property (including gift funds) remaining after satisfaction of —

- (a) the debts and liabilities of the Company; and
- (b) the costs, charges and expenses of winding up or cancelling the incorporation of the Company,

but does not include books relating to the management of the Company.

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

All references to time refer to the time in Western Australia.

- (2) Subject to subrule (6), on the cancellation of the incorporation or the winding up of the Company, the Company's surplus property must be distributed to one or more DGR entities which —
- (a) have objects similar to, or inclusive of, those of the Company, as outlined in rule 4(4);
  - (b) have rules prohibiting the distribution of its assets and income to its members to the same effect as the Company;
  - (c) is listed on the Register of Cultural Organisations maintained under the Corporations Act; and
  - (d) are entities of the type mentioned in section 24(1) of the Act.
- (3) In the case of winding up of the Company, the surplus property of the Company must be distributed to an entity (or entities) of the kind mentioned in subrule (2) which has been approved by members by special resolution at or before the time of winding up.
- (4) In circumstances where for any reason the members have not approved an entity (or entities) to which the surplus property will be distributed for the purpose of subrule (3), the Company and any liquidator appointed to the Company must ensure that any surplus property is distributed to an entity (or entities) of the kind mentioned in subrule (2), and

may (to the extent permitted by law) do anything reasonably necessary or desirable in connection with that.

- (5) In the case of cancellation of the Company, the surplus property of the Company must be distributed to an entity (or entities) of the kind mentioned in subrule (2) in accordance with a distribution plan (as that term is defined in the Act) which has been approved by special resolution and by the Commissioner.
- (6) If the Company ceases to be a DGR entity, whether or not the Company is wound up or cancelled, any surplus gift funds which are held by the Company must be paid or transferred to one or more DGR entities which are entities of the type mentioned in subrules (2)(a), (2)(b) and (2)(d).

## 75. Company will establish and maintain a public fund

- (1) In this rule –

**Arts Minister** has the meaning given in section 30-300 of the Tax Act.

**Arts Secretary** has the meaning given in section 995-1 of the Tax Act.

**DGR entity** means a deductible gift recipient as that term is defined in the Tax Act.

**Minister** has the meaning given in section 30-300 of the Tax Act.

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

- (2) While listed on the Register of Cultural Organisations, donations will be made to and deposited into the West Australian Ballet Company Inc Donations Fund (**Public Fund**). The public will be invited to contribute to the Public Fund and all monies received will be kept separate from other funds of the Public Fund and will only be used to further the principal purpose of the Public Fund. The objects of the Public Fund are the same as the Company's principal purpose in rule 4. Investment of monies in this Public Fund will be made in accordance with guidelines for public funds as specified by the Australian Taxation Office.
- (3) The Public Fund will be administered by responsible persons, comprising of a management committee or a subcommittee of the management committee, the majority of whom, because of their tenure of some public office or their professional standing, have an underlying community responsibility, as distinct from obligations solely in regard to the cultural objective of the Public Fund.
- (4) No monies/assets in this Public Fund will be distributed to members or office bearers of the Public Fund, except as reimbursement of out-of-pocket expenses incurred on behalf of the Public Fund or proper remuneration for administrative services.
- (5) The department responsible for the administration of the Register of Cultural Organisations will be notified of any proposed amendments or alterations to provisions for the Public Fund, to assess the effect of any amendment on the Public Fund's continuing status as a DGR entity.
- (6) Receipts for gifts to the Public Fund must state:
  - (a) the name of the Public Fund and that the receipt is a gift made to the Public Fund;
  - (b) the Australian Business Number of the Company;
  - (c) the fact that the receipt is for a gift; and

- (d) any other matter required to be included on the receipt pursuant to the requirements of the Tax Act.
- (7) The Company agrees to comply with any rules that the Minister and the Arts Minister make to ensure that gifts made to the Public Fund are used only for the principal purpose of the Company; and
- (8) The Company agrees to give the Arts Secretary, at intervals of 6 months, statistical information about gifts made to the Public Fund during the relevant 6 month period.

#### **76. Alteration of the Constitution**

- (1) If the Company wants to alter or rescind any of this Constitution, or to make additional rules, the Company may do so only by special resolution and by otherwise complying with Part 3 Division 2 of the Act.
- (2) Amendments to the Constitution do not take effect until required documents are lodged with the Commissioner, within one month after the special resolution is passed

#### **77. Patrons**

- (1) The Board may at any time appoint such Patrons or vice patrons as it deems appropriate or necessary from time to time.
- (2) Madam Kira Bousloff will be recognised and acknowledged as the founding Patron of the Company.

#### **78. Past acts**

- (1) Where any provision of these rules provides that a member, or the members, or the Directors, or the Board, may or must do or determine a thing, and that thing was done or determined (as applicable) under and in accordance with the Company's previous constituent documents, then that thing will be taken as having been done or determined (as applicable) for the purposes of this Constitution.
- (2) Subrule (1) does not apply —
  - (a) if and to the extent that its application would breach the Act or any applicable law; and
  - (b) where the thing would otherwise be covered by subrule (1), but that thing has been, or is, done or determined under and in accordance with this Constitution.

**APPENDIX A**  
**PROXY VOTING FORM**

I, \_\_\_\_\_ (Name)

of \_\_\_\_\_ (Address)

being a Voting Member of the Company hereby appoint my Proxy:

I, \_\_\_\_\_ (Name)

of \_\_\_\_\_ (Address)

to vote on my behalf at the Annual General Meeting of the Company to be held on ..... (date)  
at .....(time) and at any adjournment of that meeting as follows:

RESOLUTION	<i>In favour (tick)</i>	<i>Against (tick)</i>
<b>Election of Members of the Board:</b> [Nominated name/s]		
<b>Special Resolution to amend the Constitution:</b> [note changes]		

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**Notes:**

1. This proxy form must be lodged at the Company's office not less than FORTY EIGHT (48) hours before the date and time of the Annual General Meeting.
2. Your appointed proxy may only act as proxy for FIVE members at the Annual General Meeting.
3. Your proxy must be a MEMBER of the Company at the time of the Annual General Meeting.
4. The Chairman of the Annual General Meeting may NOT act as proxy for any Member at the Meeting.

**Please return to West Australian Ballet:**

Mail: PO Box 604, MAYLANDS WA 6931 or by fax: (08) 9481 0710

**APPENDIX B**  
**NOMINATION FORM**

I, \_\_\_\_\_

of \_\_\_\_\_

being a Member of the Company hereby nominate \_\_\_\_\_  
for election to the following office of the Company

- ☐ Chairperson
- ☐ Deputy-Chairperson please tick appropriate box
- ☐ Director

The Nominee is a Member of the Company and has skills and experience in the following disciplines or professions (please tick one or more)

- ☐ business management
- ☐ legal
- ☐ marketing, sponsorship and fund raising
- ☐ the performing arts
- ☐ accounting and financial

\_\_\_\_\_  
Proposer's signature                      Proposer's name                      Date

\_\_\_\_\_  
Secunder's signature                      Secunder's name                      Date

.....

I hereby accept the above-mentioned nomination:

\_\_\_\_\_  
Nominee's signature                      Date

**Note**      **This nomination form must be lodged at the Company's office not less than FOURTEEN (14) days before the Annual General Meeting.**