

**CONSTITUTION OF
GEELONG GALLERY LIMITED**

CORPORATIONS ACT

COMPANY LIMITED BY GUARANTEE

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Corporations Act
CONSTITUTION
of
GEELONG GALLERY LIMITED
ACN #[ACN]

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Constitution:

- (a) **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).
 - (b) **Annual General Meeting** means a meeting of Members held under clause 5.2(a).
 - (c) **Board** means the board of Directors of the Gallery from time to time.
 - (d) **Constitution** means this constitution as originally adopted or as amended from time to time.
 - (e) **Conversion** has the meaning under clause 7.2(a).
 - (f) **Corporations Act** means the *Corporations Act 2001* (Cth).
 - (g) **Council Director** means the person nominated as a Director by the Greater Geelong City Council in writing to the Gallery and elected as a Director pursuant to this Constitution.
 - (h) **Director** means a director of the Gallery.
 - (i) **Elected Director** has the meaning under clause 7.3(b).
 - (j) **Electronic Signature** has the meaning under clause 13.4.
 - (k) **Eligible Charity** means a charity:
 - (i) with charitable purposes similar to, or inclusive of, the Principal Purpose;
 - (ii) which also prohibits the distribution of any Surplus Assets to its Members to at least the same extent as the Gallery; and
 - (iii) which is also a deductible gift recipient endorsed charitable organisation under subdivision 30BA of the ITAA.
 - (l) **First AGM** has the meaning under clause 7.2(c).
 - (m) **Gallery** means the company to which this Constitution relates, being the company named above.
 - (n) **Gallery Director** means the chief executive officer of the Gallery from time to time who is appointed by the Board pursuant to clause 12.1;
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- (o) **General Meeting** means a meeting of Members and includes the Annual General Meeting.
- (p) **Honorary Life Member** is a person admitted to Membership with the privileges determined under clause 4.7.
- (q) **Initial Board** has the meaning under clause 7.2(b).
- (r) **ITAA** means the *Income Tax Assessment Act 1997* (Cth).
- (s) **Maximum Term** has the meaning under clause 7.9(c).
- (t) **Member** means any person admitted to membership of the Gallery (including an Honorary Life Member).
- (u) **Member Present** means, in connection with a General Meeting, a Member (or its Representative) present in person or present via the use of an electronic or telecommunications audio or audio visual device (such as by video call or phone call) as designated by the Board pursuant to clause 5.3(c)(i) and clause 5.6.
- (v) **President** means the Director elected by the Board to be the Gallery's President under clause 7.8.
- (w) **Previous Entity** has the meaning under clause 7.2(a).
- (x) **Principal Purpose** means the purpose described in clause 3.1.
- (y) **Quorum** has the meaning under clause 5.4(a).
- (z) **Registered Charity** means a charity that is registered under the ACNC Act.
- (aa) **Representative** means the representative of a Member that is not a natural person appointed in accordance with clause 5.5.
- (bb) **Secretary** means the Director elected by the Board to be the Gallery's Secretary under clauses 7.8 and 11.
- (cc) **Special Resolution** means a resolution that has been passed by at least 75% of the votes cast by Members Present and entitled to vote on the resolution at a duly convened General Meeting.
- (dd) **Surplus Assets** means any assets of the Gallery that remain after paying all debts and other liabilities of the Gallery, including the costs of winding up.
- (ee) **Treasurer** means the Director elected by the Board to be the Gallery's Treasurer under clause 7.8.
- (ff) **Vice President** means the Director elected by the Board to be the Gallery's Vice President under clause 7.8.

1.2. Reading this Constitution with the Corporations Act

- (a) The replaceable rules set out in the Corporations Act do not apply to the Gallery.
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- (b) While the Gallery is a Registered Charity, the ACNC Act and the Corporations Act override any clauses in this Constitution which are inconsistent with those Acts.
- (c) If the Gallery is not a Registered Charity (even if it remains a charity), the Corporations Act overrides any clause in this Constitution which is inconsistent with that Act.

1.3. Interpretation

In this Constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

2. LIABILITY OF MEMBERS

2.1. Type of company

The Gallery is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

2.2. Limited liability of Members

The liability of Members is limited to the amount of the guarantee in clause 2.3.

2.3. The guarantee

If the Gallery is wound up while the Member is a Member, or within 12 months after they stop being a Member, each Member must contribute an amount equal to the outstanding joining or annual fees (if any) of that Member, where this contribution is required to pay for the:

- (a) debts and liabilities of the Gallery incurred before the Member stopped being a Member; or
- (b) costs of winding up,

provided always such amount will not exceed \$10.

3. CHARITABLE PURPOSES AND POWERS

3.1. Principal Purpose

The Principal Purpose of the Gallery is to operate the public art gallery of Geelong, Victoria. The Gallery shall seek to achieve the Principal Purpose by, without limitation, undertaking the following activities:

- (a) encouraging and promoting the appreciation of the arts;
 - (b) providing leadership in the arts in the Geelong region;
 - (c) providing facilities for the display, conservation, storage and research of the Gallery collection;
 - (d) promoting community and visitor access to the Gallery and the arts;
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- (e) maintaining the collection of the Gallery, subject to disposal of works pursuant to clause 3.1(f);
- (f) acquiring by purchase, lease, loan or otherwise, and maintaining works of art which the Gallery considers will advance or benefit either directly or indirectly the interest of the Gallery in fulfilling its Principal Purpose, and disposing of works of art as appropriate;
- (g) leasing, loaning or hiring works of art from the collection of the Gallery to other galleries or organisations as deemed appropriate;
- (h) operating a retail outlet or outlets within the Gallery including an art and gift shop and or a café/restaurant;
- (i) promoting and holding either alone or jointly with any other association, gallery or persons arts-related meetings and competitions, and offering, giving or contributing towards prizes and awards; and
- (j) doing all such lawful things as are incidental or conducive to the attainment of the above purposes or any of them.

3.2. Powers

Subject to clause 3.3, the Gallery has the following powers, which may only be used to carry out its Principal Purpose:

- (a) the powers of an individual; and
- (b) all the powers of a company limited by guarantee under the Corporations Act.

3.3. Not-for-profit

- (a) The Gallery must not distribute any income or assets directly or indirectly to its Members, except as provided in clause 3.3(b).
- (b) Clause 3.3(a) does not stop the Gallery from doing the following things, provided they are done in good faith:
 - (i) paying or reimbursing a Member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Gallery; or
 - (ii) making a payment or providing a benefit to a Member in carrying out the Principal Purpose, including benefits relating to the enjoyment of facilities or services provided by the Gallery.

3.4. Amending the Constitution

- (a) Subject to clause 3.4(b), the Members may amend this Constitution by passing a Special Resolution.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Gallery to no longer be a charity.

3.5. ACNC Governance Standards

The Gallery shall comply with the “governance standards”, as that term is defined in the ACNC Act.

4. MEMBERS

4.1. Membership and register of Members

- (a) The Members are the persons or incorporated bodies that the Board allows to be Members in accordance with this Constitution.
- (b) The Gallery must establish and maintain a register of Members in accordance with the Corporations Act.

4.2. Who can be a Member

A person who supports the purposes of the Gallery is eligible to apply to be a Member under clause 4.3.

4.3. How to apply to become a Member

An application for membership of the Gallery shall be:

- (a) made in writing in such form as may be designated by the Board;
- (b) accompanied by such subscription fees as specified by the Board; and
- (c) submitted as specified by the Board.

4.4. When a person becomes a Member

An applicant shall become a Member when they are entered on the register of Members.

4.5. Member privileges and fees

The Board may from time to time determine:

- (a) the benefits and privileges of Members; and
- (b) the amount and payment arrangements for fees or subscriptions payable by Members.

4.6. When a person stops being a Member

A person immediately stops being a Member if they:

- (a) die;
- (b) in the case of a Member that is incorporated, is wound up;
- (c) in the case of a Member that is a trust, vest or otherwise cease to exist;
- (d) resign, by writing to the Secretary;
- (e) are expelled under clause 4.8;
- (f) have not responded within three months to a written request from the Secretary that they confirm in writing that they want to remain a Member; or
- (g) are more than one month in arrears in amounts required to be paid by the Member after receiving a reminder notice to pay such amounts.

4.7. Honorary Life Members

The Board may elect a person who has made an outstanding contribution to the Gallery as an Honorary Life Member of the Gallery and such Honorary Life Members

shall have all the privileges of being a Member of the Gallery for life (subject to expulsion pursuant to clause 4.8) without being required to pay any subscription fee.

4.8. Expulsion of members

The Board may by resolution expel a Member who is not a Director from the Gallery if, in its absolute discretion, the Board decides it is not in the interests of the Gallery for the person to remain a Member.

5. GENERAL MEETINGS OF MEMBERS

5.1. General meetings called by the Board

- (a) The Board may call a General Meeting.
- (b) If Members with at least 5% of the votes that may be cast at a General Meeting make a written request to the Gallery for a General Meeting to be held, the Board must:
 - (i) within 21 days of the Members' request, give all Members notice of a General Meeting; and
 - (ii) hold the General Meeting within 2 months of the Members' request.
- (c) The percentage of votes that Members have (in clause 5.1(b)) is to be worked out as at midnight before the Members request the meeting.
- (d) The Members who make the request for a General Meeting must:
 - (i) state in the request any resolution to be proposed at the meeting;
 - (ii) sign the request; and
 - (iii) give the request to the Gallery.
- (e) Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.

5.2. Annual General Meeting

- (a) A General Meeting, called the Annual General Meeting, must be held within 5 months of the end of each financial year.
 - (b) Even if these items are not set out in the notice of meeting, the business of an Annual General Meeting may include:
 - (i) approval of minutes of the last preceding Annual General Meeting and any other General Meetings since then;
 - (ii) a review of the Gallery's activities;
 - (iii) a review of the Gallery's finances;
 - (iv) any auditor's report;
 - (v) the election of Elected Directors; and
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- (vi) the appointment of auditors, if any.
- (c) In addition to the ordinary business referred to in clause 5.2(b), an item of special business, notice of which has been given in accordance with this Constitution and, in the case of special business requiring a Special Resolution, the Act, may be considered and voted on at the Annual General Meeting.
- (d) Before or at the Annual General Meeting, the Directors must give information to the Members on the Gallery's activities and finances during the previous financial year of the Gallery.

5.3. Notice of General Meetings

- (a) Notice of a General Meeting must be given to:
 - (i) each Member entitled to vote at the meeting;
 - (ii) each Director; and
 - (iii) the auditor (if any).
- (b) Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- (c) Notice of a General Meeting must include:
 - (i) the place, date and time for the meeting (and if the meeting is to be held in two or more places or virtually, the technology that will be used to facilitate this);
 - (ii) the general nature of the meeting's business; and
 - (iii) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution.
- (d) If a General Meeting is adjourned for one month or more, the Members must be given new notice of the resumed meeting.

5.4. Quorum at General Meetings

- (a) For a General Meeting to be held, at least 15 Members (**a quorum**) must be present for the whole meeting.
 - (b) No business may be conducted at a General Meeting if a quorum is not present.
 - (c) If there is no quorum present within 15 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
 - (i) if the date is not specified – the same day in the next week;
 - (ii) if the time is not specified – the same time; and
 - (iii) if the place is not specified – the same place.
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- (d) If no quorum is present at the resumed meeting within 15 minutes after the starting time set for that meeting, the meeting is cancelled.

5.5. Representatives of Members

- (a) An incorporated Member may appoint as a Representative one individual to represent the Member at General Meetings.
- (b) The appointment of a Representative by a Member must:
 - (i) be in writing;
 - (ii) include the name of the representative;
 - (iii) be signed on behalf of the Member; and
 - (iv) be given to the Gallery or, for representation at a General Meeting, be given to the chairperson before the meeting starts.
- (c) A Representative has all the rights of a Member relevant to the purposes of the appointment as a representative.
- (d) The appointment may be ongoing.

5.6. Using technology to hold meetings

- (a) The Gallery may hold a General Meeting virtually only, or at one or more physical venues and using any technology, including any audio or audiovisual electronic means, that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- (b) A Member or Representative using this technology is taken to be a Member Present at the meeting.

5.7. Chairperson for General Meetings

- (a) The President (or in the President's absence, the Vice President) is entitled to be the chairperson at General Meetings.
- (b) The Members Present and entitled to vote at a General Meeting may choose a Director to be the chairperson for that meeting if:
 - (i) there is no President or Vice President; or
 - (ii) the President (or Vice President) is not present within 15 minutes after the starting time set for the meeting; or
 - (iii) the President (or Vice President) is present but says they do not wish to act as chairperson of the meeting.

5.8. Role of the chairperson

The chairperson is responsible for the conduct of the General Meeting, and for this purpose must give Members a reasonable opportunity to make appropriate comments about the Gallery and ask reasonable questions (including to the auditor (if any)).

5.9. Adjournment of meetings

- (a) If a quorum is present, a General Meeting must be adjourned if a majority of Members Present direct the chairperson to adjourn it.
- (b) Only unfinished business may be dealt with at a meeting resumed after an adjournment.

5.10. Determining whether resolution carried

The chairperson of a General Meeting may, on the basis of a show of hands, declare that a resolution has been:

- (a) carried;
- (b) carried unanimously;
- (c) carried by a particular majority; or
- (d) lost;

and an entry to that effect in the minutes of the meeting is conclusive proof of that fact.

6. VOTING AT GENERAL MEETINGS

6.1. How many votes a Member has

Each Member has one vote.

6.2. How voting is carried out

- (a) Voting must be conducted and decided by:
 - (i) a show of hands;
 - (ii) a vote in writing; or
 - (iii) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- (b) The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands. For resolutions voted on in writing, the meeting minutes shall state the number of votes recorded in favour and against, and any abstentions.
- (c) Members cannot vote by proxy.

6.3. When and how a vote in writing must be held

- (a) A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands at any General Meeting (regardless of location, including any meeting held virtually), by:
 - (i) at least three Members Present; or
 - (ii) the chairperson.
 - (b) A vote in writing must be taken when and how the chairperson directs, unless clause 6.3(c) applies.
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- (c) A vote in writing must be held immediately if it is demanded under clause 6.3(a) to decide whether to adjourn the meeting.
- (d) A demand for a vote in writing may be withdrawn.

7. DIRECTORS

7.1. Number of Directors and classes

The Gallery must have at least three and no more than ten Directors as specified in clause 7.3. The Elected Directors shall be divided into three classes designated as Group One, Group Two and Group Three, respectively. Each Elected Director shall be assigned to one such class in accordance with a resolution adopted by the Board, which class may be changed from time to time by the Board. The classes do not need to be of equal or approximately equal size.

7.2. Transitional provisions

- (a) This Constitution is adopted upon the registration of the Gallery and its conversion (**Conversion**) from its previous incorporation as an Incorporated Association (**Previous Entity**).
- (b) Upon Conversion:
 - (i) The Board shall consist of the Board of Directors of the Previous Entity in place immediately after the General Meeting at which this Constitution was first approved by the vote of the Members (**Initial Board**); and
 - (ii) The President, Vice President, Secretary and Treasurer of the Previous Entity in place immediately after the General Meeting at which this Constitution was first approved by the vote of the Members shall serve as the President, Vice President, Secretary and Treasurer of the Gallery until their removal pursuant to clause 7.8.
- (c) The Initial Board shall be in place until the Annual General Meeting of the Gallery immediately following the General Meeting at which this Constitution was first approved by the vote of the Members (**First AGM**), subject to any changes in the Initial Board pursuant to this Constitution.
- (d) At the First AGM, the term of office of the Group One Directors shall expire and Group One Directors shall be elected for a full term of three years. At the Annual General Meeting immediately following the First AGM, the term of office of the Group Two Directors shall expire and Group Two Directors shall be elected for a full term of three years. At the second Annual General Meeting following the First AGM, the term of office of the Group Three Directors shall expire and Group Three Directors shall be elected for a full term of three years. At each succeeding Annual General Meeting, Directors shall be elected for a full term of three years to succeed the Directors of the class whose terms expire at such Annual General Meeting.

7.3. Composition

Provided always the number of Directors complies with clause 7.1, the Board shall consist of:

- (a) the Council Director (if appointed by the Council); and
 - (b) up to 9 Directors (each, an **Elected Director**).
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7.4. Eligibility

A person is eligible for election as a Director if the person:

- (a) is a Member;
- (b) has not served a Maximum Term as a Director;
- (c) has given the Gallery a signed consent to act as a Director; and
- (d) is not ineligible to be a director under the Corporations Act or the ACNC Act.

7.5. Council Director

- (a) The City of Greater Geelong may from time to time in writing to the Board, nominate a person who shall be a Councillor of the City of Greater Geelong to be the Council Director.
- (b) The Gallery shall do such things as are necessary to appoint that person as the Council Director.

7.6. Elected Directors

- (a) The Members in General Meeting may resolve to appoint an Elected Director, provided that person is eligible under clause 7.4.
- (b) If at any election for Elected Directors the number of nominations is the same or less than the number of vacant positions, then the nominated persons shall be deemed to be elected without requirement for any vote to occur.

7.7. Vacancies

- (a) A vacancy arises when the Board is not constituted as contemplated by clauses 7.1 and 7.3, and the Board determines there is a vacancy.
- (b) The Board may appoint any person eligible to serve as a Director to fill a vacancy and classify such person as a member of Group One, Group Two or Group Three depending on which Group will be up for election at the next succeeding Annual General Meeting.
- (c) A person appointed to fill a vacancy as an Elected Director shall hold office until the next Annual General Meeting, and is then eligible for election as an Elected Director.

7.8. Election of President, Vice President, Secretary and Treasurer

At the first Board meeting after each Annual General Meeting, the Board shall elect from the Directors a President, Vice President, Secretary and Treasurer. Subject to clause 7.2, those persons shall hold office until the commencement of the first Board meeting after the Annual General Meeting following their appointment and shall be eligible for re-election. The Board may at any time remove the President, Vice President, Secretary or Treasurer and appoint a replacement. Service as an officer for consecutive terms is permitted and officers are expected to serve for at least three years.

7.9. Term of office of a Director

- (a) The term of office of a Director is three years commencing on:
- (i) in the case of the Council Director, at the end of the first Annual General Meeting to occur after the Council Director's date of appointment; and
 - (ii) in the case of an Elected Director, the end of the Annual General Meeting at which the Elected Director is appointed, or, the end of the first Annual General Meeting after the Elected Director is first appointed if the Elected Director is first appointed at a General Meeting other than the Annual General Meeting,
- and must exclude any term of office held in filling a vacancy.
- (b) Subject to clause 7.2, the expiration of a Director's term of office is deemed to occur at the conclusion of the third Annual General Meeting following the appointment or election of that Director (as the case may be).
- (c) The maximum duration of service on the Board for each Director is three terms of three years (which terms need not be consecutive) or nine years (which years need not be consecutive), whichever comes later, of service as a Director of the Gallery and/or a member of the board of directors of the Previous Entity (**Maximum Term**).

7.10. When a Director stops being a Director

A Director stops being a Director if the Director:

- (a) completes the term of office for which she or he was elected;
- (b) completes the Maximum Term;
- (c) resigns in writing to the Board or refuses to act;
- (d) dies;
- (e) is removed as a Director by a Special Resolution of the Members;
- (f) stops being a Member;
- (g) is absent for three consecutive Directors' meetings without approval from the Board granted prior to the third missed meeting; or
- (h) becomes ineligible to be a Director under the Corporations Act or the ACNC Act.

8. POWERS OF THE BOARD

8.1. Powers of the Board

- (a) The Board is responsible for directing and overseeing the activities of the Gallery to achieve the Principal Purpose.
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- (b) The Board may use all the powers of the Gallery except for powers that, under the Corporations Act or this Constitution, may only be used by Members.
- (c) The Board must decide on the responsible financial management of the Gallery including:
 - (i) any suitable written delegations of power under clause 8.2; and
 - (ii) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved, and how cash is managed.
- (d) The Board cannot remove a Director or auditor. Directors and auditors may only be removed by the Members at a General Meeting. For the avoidance of doubt, this clause 8.1(d) does not apply to any Director who ceases to be a Director by operation of clause 7.10.

8.2. Delegation of Board powers

- (a) The Board may delegate any of its powers and functions to a sub-committee, a Director, an employee of the Gallery (such as the Gallery Director) or any other person, as the Board considers appropriate and in accordance with applicable law, and subject to Board oversight, including:
 - (i) for a fixed term and task; or
 - (ii) until the Board determines the delegation is no longer required.
- (b) Delegations pursuant to this clause 8.2 shall be recorded in the Gallery's minute book.

8.3. Sub-committees

- (a) The Board shall approve a charter or terms of reference for each sub-committee.
 - (b) The Board shall appoint the members of each sub-committee, which may include persons other than Directors.
 - (c) Each sub-committee shall:
 - (i) be managed or overseen by the Board;
 - (ii) operate subject to this Constitution;
 - (iii) comply with all resolutions of the Board; and
 - (iv) keep minutes of all meetings, provide copies of minutes of meetings to the Board and report to the Board on its activities at the request of the Board.
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8.4. Gallery support groups

- (a) The Board may authorise the establishment and operation of support groups comprising Members of the Gallery to carry on and promote the Gallery's Principal Purpose.
- (b) The Board shall approve a charter or terms of reference for each support group authorised by the Board.
- (c) Authorisations pursuant to this clause 8.4 shall be recorded in the Gallery's minute book.
- (d) A support group authorised by the Board shall:
 - (i) be managed or overseen by the Board or a sub-committee;
 - (ii) operate subject to this Constitution;
 - (iii) comply with all resolutions of the Board; and
 - (iv) keep minutes of all meetings, provide copies of minutes of meetings to the Board and report to the Board on its activities at the request of the Board.

8.5. Payments to Directors

- (a) The Gallery must not pay fees to a Director for acting as a Director.
- (b) The Gallery may:
 - (i) pay or reimburse a Director for goods or services they have provided (other than as a Director) or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Gallery; or
 - (ii) provide a benefit to a Director in carrying out the Principal Purpose, including benefits relating to the enjoyment of facilities or services provided by the Gallery.
- (c) Any payment made under clause 8.5(b) must be approved by the Board.
- (d) The Gallery may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Corporations Act) and this Constitution.

9. DUTIES OF DIRECTORS

9.1. Duties of Directors

The Directors must comply with their duties as directors under legislation and common law, and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) 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 Director;
 - (b) to act in good faith in the best interests of the Gallery and to further the Principal Purpose;
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- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;
- (e) to disclose any conflicts of interest;
- (f) to ensure that the financial affairs of the Gallery are managed responsibly;
and
- (g) not to allow the Gallery to operate while it is insolvent.

9.2. Director interested in a matter

Each Director must comply with the duties described under the ACNC Act in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a conflict of interest.

10. BOARD MEETINGS

10.1. When the Board meets

The Board shall generally meet six times per year, but has the ability to decide how often, where and when it shall meet.

10.2. Calling Board meetings

- (a) A Director may call a Board meeting by giving reasonable notice to all of the other Directors.
- (b) A Director may give notice in writing or by any other means of communication that has previously been agreed to by all of the Directors.

10.3. Chairperson for Board meetings

- (a) The President, and in the absence of the President, the Vice President, is entitled to be the chairperson at Board meetings.
- (b) The Directors at a Board meeting may choose a Director to be the chairperson for that meeting if the President (and the Vice President) is:
 - (i) not present within 15 minutes after the starting time set for the meeting; or
 - (ii) present but does not want to act as chairperson of the meeting.

10.4. Quorum at Board meetings

- (a) The quorum for a Board meeting is 50% or more of Directors.
- (b) A quorum must be present for the whole Board meeting.

10.5. Using technology to hold Board meetings

The Directors may hold Board meetings at one or more physical venues or virtually, and by using any technology (such as video or teleconferencing).

10.6. Passing Board resolutions

A Board resolution must be passed:

- (a) by a majority of the votes cast by Directors present and entitled to vote on the resolution at a duly called meeting at which a quorum is present, and shall be determined on a show of hands or, if demanded by a Director, by a poll taken in such manner as the chairperson of the meeting may determine; or
- (b) in accordance with clause 10.7.

10.7. Circular resolutions of Directors

- (a) The Directors may pass a circular resolution without a Board meeting being held.
- (b) A circular resolution is passed if all the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 10.7(c) or clause 10.7(d).
- (c) Each Director may sign:
 - (i) a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - (ii) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- (d) The Gallery may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- (e) A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clause 10.7(c) or clause 10.7(d).
- (f) Each circular resolution shall be recorded in the Gallery's minute book.

11. SECRETARY

- (a) The Gallery must have at least one Secretary, who shall also be a Director.
- (b) A Secretary must be appointed by the Board (after giving the Gallery their signed consent to act as Secretary) and may be removed by the Board.

12. GALLERY DIRECTOR

12.1. Gallery Director

- (a) The Board may appoint a Gallery Director from time to time to be the chief executive officer of the Gallery on terms it sees fit.
 - (b) The Gallery Director shall have general management and supervision of the property, business and affairs of the Gallery, subject to applicable law and any resolution by the Board.
 - (c) The Board may delegate any of its powers to the Gallery Director to the extent permitted by law.
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- (d) The Board shall monitor the performance of the Gallery Director and oversee his or her activities.

12.2. Gallery Director not a Director

To avoid doubt, the Gallery Director is not a Director of the Gallery.

13. GALLERY RECORDS AND DOCUMENTS

13.1. Financial and related records

- (a) The Gallery 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 Gallery must keep written records that correctly record its operations.
- (c) The Board must take reasonable steps to ensure that the Gallery's records are kept safe.

13.2. Directors' access to documents

- (a) A Director has a right of access to the records of the Gallery at all reasonable times.
- (b) If the Directors agree, the Gallery must give a Director or former Director access to:
 - (i) certain documents, including documents provided for or available to the Directors; and
 - (ii) any other documents referred to in those documents.

13.3. Right of a Member to inspect

A Member or other person (not being a Director) has no right to inspect any of the books or documents of the Gallery except as conferred by statute or authorised by the Board or by a resolution of the Gallery in General Meeting.

13.4. Electronic Execution

Documents may be signed using an electronic signature, an electronic communication (as that term is defined in the *Electronic Transactions Act 1999* (Cth)) or a proprietary program (for example DocuSign or AdobeSign) which is applied following verification of an individual's identity (collectively, an **Electronic Signature**) and the use of an Electronic Signature constitutes legally effective execution of the document by the Gallery or a Director (as the case may be) and will be considered conclusive as to the persons' intention to sign the document as if signed by that person's (or any of its duly authorised signatory's) manuscript signature.

14. NOTICE

14.1. What is notice

Anything written to or from the Gallery under any clause in this Constitution is written notice and is subject to clauses 14.2 to 14.4, unless specified otherwise.

14.2. Notice to the Gallery

Written notice or any communication under this Constitution may be given to the Gallery, the Directors or the Secretary by:

- (a) delivering it to the Gallery's registered office;
- (b) posting it to the Gallery's registered office or to another address chosen by the Gallery for notice to be provided; or
- (c) sending it to an email address or other electronic address notified by the Gallery to the Members as the Gallery's email address for notice.

14.3. Notice to Members

Written notice or any communication under this Constitution may be given to a Member:

- (a) in person;
- (b) by posting it to, or leaving it at, the address of the Member in the register of Members or an alternative address (if any) nominated by the Member for service of notices;
- (c) sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any); and/or
- (d) by notifying the Member at an email or other electronic address nominated by the Member, that the notice is available at a specified place or address (including an electronic address).

14.4. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the fifth day after it is posted with the correct payment of postage costs;
- (c) sent by email or other electronic method, is taken to be given on the business day it is sent; and
- (d) given under clause 14.3(d), is taken to be given on the business day after the notification that the notice is available is sent.

15. FINANCIAL YEAR

The Gallery's financial year is from 1 July to 30 June, unless the Board passes a resolution to change the financial year.

16. INDEMNITY AND INSURANCE

16.1. Indemnity

- (a) The Gallery indemnifies each officer of the Gallery out of the assets of the Gallery, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Gallery.
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- (b) In this clause, 'officer' means a Director or Gallery Director and includes a Director or Gallery Director after they have ceased to hold that office.
- (c) In this clause, 'to the relevant extent' means:
 - (i) to the extent that the Gallery is not precluded by law (including the Corporations Act) from doing so; and
 - (ii) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- (d) The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Gallery.

16.2. Insurance

To the extent permitted by law (including the Corporations Act), and if the Board considers it appropriate, the Gallery may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Gallery against any liability incurred by the person as an officer of the Gallery.

17. WINDING UP

17.1. Surplus Assets not to be distributed to Members

If the Gallery is wound up or ceases to be endorsed as a deductible gift recipient under subdivision 30BA of the ITAA (whichever occurs first), any Surplus Assets must not be distributed to a Member or a former Member, unless that Member or former Member is an Eligible Charity.

17.2. Distribution of Surplus Assets

- (a) Subject to the Corporations Act and any other applicable Act, and any court order, any Surplus Assets that remain after the Gallery is wound up or ceases to be endorsed as a deductible gift recipient under subdivision 30BA of the ITAA (whichever occurs first) must be distributed to one or more Eligible Charities.
 - (b) The Members must resolve by a Special Resolution which Eligible Charity or Eligible Charities will be given the Surplus Assets at or before the time of winding up. If the Members do not make this decision, the Gallery may apply to the Supreme Court of Victoria to make this decision.
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