

**THEATRE KIMBERLEY
INCORPORATED
RULES AND CONSTITUTION**

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Part 1 - Preliminary

1. NAME

The name of the Association shall be Theatre Kimberley Incorporated

2. TERMS USED

In these rules, unless the contrary intention appears —

Act means the *Associations Incorporation Act 2015*;

Associate member means a member admitted to the category of membership described in subrule 11(1)(c)(d);

Association means Theatre Kimberley Incorporated.

Board means the management committee of the Association;

Board meeting means a meeting of the Board convened under rule 44;

Books, of the Association, 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;

Chairperson or Chair means the Board member holding office as the Chairperson or Chair of the Association;

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

Director means an ordinary member appointed to the Board under rule 36 or rule 40;

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;

General Meeting means an Annual General Meeting or a Special General Meeting of the members of the Association convened under rule 52 or 53 respectively;

Member includes all categories of membership of the Association including Associate membership;

Ordinary member means a member of the Association who is an individual member or a life member;

Presiding member means the member of the Board or a subcommittee who is chairing a meeting;

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

Rules means these rules of the Association, as in force for the time being;

Secretary means the Board member holding office as the Secretary of the Association;

Special General Meeting means a general meeting of the Association 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;

Subcommittee means a subcommittee appointed by the Board under rule 51(1);

Subrule means a section within a rule identified with a numeric or alphabetic label;

Treasurer means the Board member holding office as the Treasurer of the Association.

3. OBJECTS

The objects of the Association are:

To work collaboratively and inclusively with individuals and communities to create high-quality arts opportunities which:

- Contribute to local stories and culture
- Increase creativity, skills and employment,
- Improve health & wellbeing, and
- Strengthen communities.

4. FINANCIAL YEAR

The Association financial year will commence on 1st January each year and end on 31 December each year.

Part 2 – Association to be a not-for-profit body

5. NOT-FOR-PROFIT BODY

(1) The property and income of the Association must be applied solely towards the promotion of the objects or purposes of the Association 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 Association only if it is authorised under subrule (3).

(3) A payment to a member out of the funds of the Association is authorised if it is —

- (a) the payment in good faith to the member as reasonable remuneration for any services provided to the Association, or for goods supplied to the Association, in the ordinary course of business; or
- (b) the payment of interest, on money borrowed by the Association from the member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or
- (c) the payment of reasonable rent to the member for premises leased by the member to the Association; or
- (d) the reimbursement of reasonable expenses properly incurred by the member on behalf of the Association.

6. PUBLIC FUND

The Association shall maintain and promote a public fund listed on the Federal Register of Cultural Organisations (ROCO) for the receipt of deductible gifts that the public will be invited to contribute to. The public fund will be named the Theatre Kimberley Incorporated Foundation Fund. The operations of the public fund will be as follows:

- (a) The fund will be administered by a standing committee appointed by the

Board and of which a majority of persons meet the Australian Taxation Office requirements for persons of responsibility, who will comply with any rules made by the Federal Treasury Minister and Minister for the Arts to ensure these funds will only be used to further the principle purpose of the Association.

(b) The ROCO will be notified of any proposed amendments or alterations to provisions for this fund and provided statistical information about gifts made to the public fund during the previous six months.

(c) Gifts to the fund will be kept in a separate bank account from any other funds of the Association;

(d) All donated monies and any interest accruing thereon, will be credited to and kept in this fund;

(e) Receipts will be issued in the name of the public fund, include TK Incorporated's ABN, state that it's a receipt for a gift, and anything else required by the Income Tax Assessment Act 1997;

(f) No monies or assets in this fund will be distributed to members or office bearers of the organisation, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.

Part 3 — Members

Division 1—Membership

7. MINIMUM NUMBER OF MEMBERS

The Association must have at least six Members with full voting rights.

8. ELIGIBILITY FOR MEMBERSHIP

(1) Any person who supports the objects or purposes of the Association is eligible to apply to become a member.

(2) An individual who is not yet 15 years old is not eligible to apply for a category of membership that confers full voting rights.

(3) Any individual member who has given outstanding service to the Association and who is nominated by a Director of the Board may be awarded a life membership by the Board. A life member is not required to pay annual membership fees and will be entitled to all privileges of the Association's individual membership.

(4) Individuals wishing to support the Association's objectives but who fall outside the criteria for membership under rule 11, (for example residents outside Western Australia), can become associate members of the Association. Associate members do not have voting rights and are not eligible to nominate for the Board.

(5) Membership is not open to anyone who is currently employed under a 'contract of employment' by the Association. Staff can become members immediately following the date of their departure from the Association, however they are not eligible for appointment to the Board within two (2) years from their date of departure from the Association.

9. APPLYING FOR MEMBERSHIP

(1) A person who wants to become a member must:

(a) state or indicate in writing that they want to become a member;

(b) agree that they support the objects of the Association;

(c) pay the prescribed membership fee (if any) as determined by the Board, in accordance with rule 15, within the prescribed time; and

(d) be accepted as a member of the Association by the Board or by such person, persons or subcommittee to which the Board may from time to time delegate that authority. At the time of acceptance, the Board, or delegate of the Board, will determine the most appropriate membership category as per rule 11.

(2) The Board may review its determination of a member's membership category from time to time.

(3) The Board may reject any application for membership and is not obliged to provide reasons for doing so. However, the Board shall advise an unsuccessful applicant in writing of its rejection of their application.

10. BECOMING A MEMBER

An applicant for membership of the Association becomes a member when —

- (a) the Board accepts the application; and
- (b) the applicant pays any membership fees payable to the Association under rule 15.

11. CATEGORIES OF MEMBERSHIP

(1) The categories of membership of the Association are:

Ordinary

- (a) Individual member: available to any Western Australian resident over the age of 15 years who is not otherwise excluded from membership by any provision within these Rules;
- (b) Life Member: An individual member appointed to life membership in accordance with rule 8(3);

Associate

- (c) Associate member - Circus Family: a family with a child or children enrolled in Sandfly Circus classes
- (d) Associate member - Other: as decided by the membership.

(2) An ordinary member has full voting rights and any other rights conferred on members by these rules or approved by resolution at a general meeting or determined by the Board

(3) The Association may have any category of associate membership approved by resolution at a general meeting, including junior membership, senior membership, and honorary membership.

12. WHEN MEMBERSHIP CEASES

(1) A person or organisation ceases to be a member when any of the following takes place —

- (a) the individual dies;
- (b) the member resigns from the Association under rule 13;
- (c) the member is expelled from the Association under rule 18;
- (d) the member ceases to be a member under rule 15(4).

(2) The Secretary must keep a record, for at least one year after a person ceases to be a member, of —

- (a) the date on which the person or organisation ceased to be a member; and
- (b) the reason why the person ceased to be a member.

13. RESIGNATION

(1) A member may resign from membership of the Association by giving written notice of the resignation to the Secretary.

(2) The resignation takes effect —

- (a) when the secretary receives the notice; or
- (b) if a later time is stated in the notice, at that later time.

(3) A person who has resigned from membership of the Association remains liable for any fees that are owed to the Association (the owed amount) at the time of resignation.

(4) The owed amount may be recovered by the Association in a court of competent jurisdiction as a debt due to the Association.

14. RIGHTS NOT TRANSFERABLE

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

Division 2—Membership fees

15. MEMBERSHIP FEES

(1) The Board must determine the annual membership fee (if any) to be paid for membership of the Association.

(2) The fees determined under subrule 15(1) may be different for different categories of membership.

(3) A member must pay the annual membership fee to the Treasurer, or another person authorised by the Board to accept payments, by the date (the due date) determined by the Board.

(4) If a member has not paid the annual membership fee within the period of three (3) months after the due date, the member ceases to be a member on the expiry of that period.

(5) If a person who has ceased to be a member under rule 15.4 offers to pay the annual membership fee after the period referred to in that rule 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.

Division 3—Register of members

16. REGISTER OF MEMBERS

(1) The Secretary, or another person authorised by the Board, is responsible for the requirements imposed on the Association under section 53 of the Act to maintain the register to include contact details of members and to record in that register any change in the membership of the Association.

(2) In addition to the matters referred to in section 53(2) of the Act, the register of members must include the category of membership to which each member belongs, and the date on which each member becomes a member.

(3) The register of members must be kept at a 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. It is free of cost to access the register but if a copy is required the Board may charge a fee.

(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;

then 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 Association.

Part 4 – Disciplinary Action, Disputes and Mediation

Division 1—Term used

17. TERM USED: MEMBER

In this part —

Member, in relation to a member who is expelled from the Association, includes a former member, and an associate member.

Division 2 —Disciplinary action

18. SUSPENSION AND EXPULSION

(1) The Board may decide to suspend a member's membership, or to expel a member from the Association, if:

- (a) the member contravenes any of these rules; or
- (b) the member acts detrimentally to the interests of the Association.

(2) The Secretary must give the member written notice of the proposed suspension or expulsion at least twenty-eight (28) 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 and/or 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 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 Association.

(5) A decision of the Board to suspend the member's membership or to expel the member from the Association 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 Association may request the appointment of a mediator by writing to the Secretary within fourteen (14) days after receiving notice of the Board's decision under subrule 18(6).

(8) If notice is given under subrule 18(7), the member who gives the notice, and the Board, are the parties to the mediation.

19. CONSEQUENCES OF SUSPENSION

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 Association.

(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; and
- (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

20. 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.

21. APPLICATION OF DIVISION

The grievance procedure applies to disputes:

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

22. PARTIES TO ATTEMPT RESOLUTION

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.

23. 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 22, 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 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 (1) or more members and the Association; 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 Board; and
 - (ii) requests the appointment of a mediator under rule 8.2, then the Board must not determine the dispute.

24. DETERMINATION OF DISPUTE BY THE BOARD

(1) At the Board meeting at which a dispute is to be considered and determined, the Board must:

- (a) give each party to the dispute, or the party's representative, a reasonable opportunity to make written and/or 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 rule 22(c), give written notice to the Secretary requesting the appointment of a mediator under rule 26.

(4) If notice is given under rule 24(3), each party to the dispute is a party to the mediation.

Division 4 — Mediation

25. APPLICATION

(1) Rules 26, 27 and 28 apply if written notice has been given to the secretary requesting the appointment of a mediator:

- (a) by a member under subrule 18(7); or
- (b) by a party to a dispute under subrules 23(5)(b)(ii) or 24(3).

(2) If subrule (1) applies, a mediator must be chosen or appointed under rule 26.

26. 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 18(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 subrule 23(5)(b)(ii) or 24(3)— by agreement between the parties to the dispute.

(2) If there is no agreement for the purposes of subrule (1), then, subject to subrules 26(3) and 26(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 subrule 18(7); or
- (b) a party to a dispute under subrule 23(5)(b)(ii); or
- (c) a party to a dispute under subrule 24(3) and the dispute is between one (1) or more members and the Association.

(4) The person appointed as mediator by the Board may be a member or former member of the Association 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.

27. 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.

(7) Section 182(1) of the Act provides that an application may be made to the State Administrative Tribunal to have a dispute determined if the dispute has not been resolved under the procedure provided for in the incorporated Association's rules.

28. 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 Association gives notice under subrule 18(7); and
- (b) as the result of the mediation, the decision to suspend the member's membership or expel the member is revoked, then 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.

Division 1—Powers of the Board

29. BOARD

- (1) The Directors are the people who, as the Board of the Association, have the power to manage the affairs of the Association.
- (2) Subject to the Act, these rules, 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 Association.
- (3) The Board must take all reasonable steps to ensure that the Association complies with the Act, these rules and the by-laws (if any).

Division 2—Composition of Board and duties of members

30. BOARD DIRECTORS

- (1) The Board consists of:
 - (a) a Chairperson;
 - (b) a Vice Chairperson;
 - (c) a Secretary;
 - (d) a Treasurer; and
 - (e) not less than three (3) and not more than seven (7) other persons all of whom shall be ordinary members of the Association elected to the Board at an Annual General Meeting or, where a casual vacancy occurs, appointed to such a vacancy by the Board under rule 39.
- (2) A person must not hold two (2) or more of the offices mentioned in subrule 30(1) at the same time.
- (3) The following people are ineligible to become Directors of the Association:
 - (a) A person who is, according to the *Interpretation Act 1984* section 13D, a bankrupt or person whose affairs are under insolvency laws;
 - (b) A person who has been convicted, within or outside the State, of—
 - (i) an indictable offence in relation to the promotion, formation or management of a body corporate; or
 - (ii) an offence involving fraud or dishonesty punishable by imprisonment for a period of not less than three (3) months; or
 - (iii) an offence under Part 4 Division 3 or section 127 of the Act
 - (c) Subrule 30(3)(b) only applies to a person who has been convicted of the above offences for a period of five (5) years from the time of the person's conviction, or if the conviction results in a term of imprisonment, from the time of the person's release from custody.
- (4) Either at each Annual General Meeting, or at its first meeting following each Annual General Meeting, the Board shall elect one of its Directors to each of the positions listed in subrule (1)(a)-(d).

(5) All Directors shall, upon election or on nomination, act in the best interests of the Association and not as a representative of any other organisation.

(6) In the event that any of the positions appointed under subrule (4) become vacant, the Board must elect a replacement at the earliest opportunity.

31. CHAIRPERSON or CHAIR

(1) The Chairperson shall preside at all General Meetings and Board meetings. In the absence of the Chairperson the Vice Chairperson shall preside at the general meeting or Board meeting as the case requires.

(2) Where both the Chairperson and Vice Chairperson are absent the members present at a meeting may elect an acting Chairperson for that meeting.

(3) It is the duty of the Chairperson to consult with the Executive (comprising all four (4) office holders: Chairperson, Vice Chairperson, Secretary, Treasurer and Executive Staff) regarding the business to be conducted at each Board meeting and at general meetings.

32. SECRETARY

The Secretary shall:

- (a) keep or supervise the keeping of full and correct minutes of the Board and the Association;
- (b) Ensure that the Association complies with sections 35 (1) (maintaining rules), 53 (1) (register of members) and 58 (2) (record of office holders) of the Act;
- (c) ensure the security of all records, books, documents and securities of the Association, including those referred to in subrule 32(b) other than those required by rule 33 to be kept and maintained by, or in custody of, the Treasurer.

33. TREASURER

The Treasurer shall ensure:

- (a) amounts payable to the Association are collected and receipts are issued for those amounts in the name of the Association;
- (b) the payment of all monies referred to in subrule 32(a) into such account or accounts of the Association as the Board may from time to time direct;
- (c) the making of payments from the funds of the Association with the authority of the Board and in so doing will ensure that all payments are signed by two (2) signatories authorised by the Board;
- (d) that the Association complies with Part 5 of the Act in respect of the accounting records of the Association;
- (e) the safe custody of all securities, books and documents of a financial nature, and the accounting records of the Association;
- (f) the presentation of financial statements at every Board Meeting and the audited accounts at the Annual General Meeting;
- (g) providing any assistance required by an auditor or reviewer conducting an audit or review of the Association's financial statements or financial report under Part 5 Division 5 of the Act.

Division 3—Election of Directors and tenure of office

34. HOW MEMBERS BECOME DIRECTORS

An ordinary member becomes a Director if the Member:

- (a) is elected to the Board at a general meeting; or
- (b) is appointed by the Board to fill a casual vacancy under rule 39.

35. NOMINATION OF DIRECTORS

(1) At least 56 days prior to the Annual General Meeting, written notice must be sent to all members—

(a) Inviting nominations from ordinary members for appointment to the vacant positions on the Board; and

(b) Specifying the date 21 days from the date of issue of the notice by which nominations must reach the association.

(2) Nominations must be received on the appropriate form and include a brief statement by the candidate that if necessary may be circulated with the ballot paper to all members eligible to vote in the Board election.

(3) All persons nominating for a position on the Board must be current ordinary members at the date of nomination and at the date of the Annual General Meeting.

36. ELECTION OF DIRECTORS

(1) If the number of people nominated to the Board exceeds the number of Board positions then the Board may form a Board Nominations Subcommittee. They can choose to have an election to fill the vacant positions before the Annual General Meeting and may decide to ask for ballot papers. No access to the completed ballot papers shall be allowed to the Association's Directors, staff or members of the general public.

(2) Information about each candidate along with an official ballot paper shall be distributed to all ordinary members at least twenty-one (21) days prior to the date of the Annual General Meeting. The final list of nominated candidates on the official ballot paper will have been determined by the sub-committee of the Board (the Board Nominations Committee). In compiling the ballot paper, the Board Nominations Committee may exclude a nominated candidate, if that Committee considers that the candidate does not have the appropriate skills or experience to fulfil the functions of a Director, or is for any other reason unsuitable for appointment to the Board.

(3) All ordinary members shall have one (1) vote.

(4) Only the Association's Board Nominations Committee shall have access to the completed ballot papers, and they shall be responsible for their security and supervised destruction after the ballot has been declared and accepted by the membership at the Annual General Meeting.

(5) Completed ballot forms must be received by the Board Nominations Committee at least ten (10) days prior to the Annual General Meeting. The Board Nominations Committee will check the validity of each ballot cast and count the votes cast for each candidate.

(6) The Board Nominations Committee shall declare the results of the election to the Association's Chairperson at least seven (7) days prior to the Annual General Meeting.

(7) If the number of persons nominated, in writing, for election to the Board does not exceed the number of vacancies, the Chairperson shall declare those persons to be duly elected as Directors of the Board at the Annual General Meeting concerned.

37. TERM OF OFFICE

(1) Except as provided in subrule (2), each Director will hold office for a) as long as they willingly choose to nominate or renominate themselves, and, b) another TK Incorporated Board member nominates or renominates them.

(2) Where a Director is appointed to fill a casual vacancy under rule 40, that Director will hold office:

- (a) If the vacancy arose under rule 38 or rule 39, for the remainder of the term to which the departing Director was appointed; or
- (b) If the vacancy was filled under rule 40 (1)(b), for the term that would have applied had the appointment been made at the Annual General Meeting.

38. RESIGNATION AND REMOVAL FROM OFFICE

(1) A Director may resign from the Board by written notice given to the Secretary or, if the resigning member is the Secretary, given to the 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 Association may by resolution:

- (a) remove a Director from office; and
- (b) elect a Director who is an eligible member to fill the vacant position.

(4) A Director who is the subject of a proposed resolution under subrule 37(5)(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 ordinary 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.

39. WHEN MEMBERSHIP OF THE BOARD CEASES

(1) A person ceases to be a Board Member if the person:

- (a) dies or otherwise ceases to be a member; or
- (b) resigns from the Board or is removed from office under rule 38; or
- (c) becomes ineligible to accept an appointment or act as a Board member under section 39 of the Act;
- (d) becomes permanently unable to act as a Board member because of a mental or physical disability; or
- (e) fails to attend three (3) consecutive Board meetings, of which the person has been given notice, without having notified the Board that the person will be unable to attend.

(2) Where a person ceases to be a Director, section 41 of the Act requires that person to, as soon as practicable after their directorship ceases, deliver to another Director all of the relevant documents and records they hold pertaining to the management of the Association's affairs.

40. FILLING CASUAL VACANCIES

(1) The Board may ask the Board Nominations Committee to recommend for appointment a member who is eligible to fill a Director's position on the Board that:

- (a) has become vacant under subrule 38(2); or
- (b) was not filled by election at the most recent Annual General Meeting or under subrule 35(7).

(2) If the position of Secretary becomes vacant, the Board must appoint an eligible member to fill the position at the earliest practical opportunity after the vacancy arises.

(3) Subject to the requirement for a quorum under rule 47, 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 47, the Board may act only for the purpose of:

- (a) appointing Directors under this rule; or
- (b) convening a general meeting.

41. 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.

42. PAYMENTS TO DIRECTORS

A Director or member of a subcommittee is entitled to be paid out of the funds of the Association for any out-of-pocket expenses for travel and accommodation properly incurred:

- (a) In attending a Board or subcommittee meeting; or
- (b) In attending a general meeting; or
- (c) Otherwise in connection with the Association's business.

Division 4—Board meetings

43. BOARD MEETINGS

(1) The Board shall meet as often as may be required to conduct the business of the Association and, in any event, at least four times per year (excluding the AGM).

(2) The Chairperson, or any two (2) Directors of the Board, shall have the power to convene a meeting of the Board.

44. NOTICE OF BOARD MEETINGS

(1) Notice of meetings shall be given at the previous Board Meeting or by fourteen (14) days written notice to all Directors or, in any emergency, such other notice as the Board shall ratify at the next Board Meeting regularly called.

(2) At least three days before the meeting, Directors must be provided with an agenda stating the date, time and place of the meeting and which describes 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 agenda.

(4) Urgent business that has not been described in the agenda may be conducted at the meeting if the Directors at the meeting unanimously agree to treat that business as urgent.

45. PROCEDURE AND ORDER OF BUSINESS

(1) The order of business at a Board meeting may be determined by the Directors at the meeting.

(2) A member of the Association or other person who is not a Director may attend a Board meeting if invited to do so by the Board.

(3) A person invited under subrule (2) to attend a Board meeting:

- (a) has no right to any agenda, minutes or other document circulated at the meeting; and
- (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.

46. USE OF TECHNOLOGY TO BE PRESENT AT BOARD MEETINGS

(1) The presence of a Director or subcommittee member at a Board or subcommittee meeting need not be by attendance in person, but may be by that person and each other person at the meeting being simultaneously in contact by telephone, or other means of instantaneous online communication.

(2) A member who participates in a Board or subcommittee 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.

47. QUORUM FOR BOARD MEETINGS

(1) At a Board Meeting four (4) Directors, with at least one (1) being an office bearer, constitutes a quorum.

(2) Subject to rule 40(4), no business is to be conducted at a Board meeting unless a quorum is present.

(3) If a quorum is not present within 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 to a date and time determined by those Directors present at the meeting.

48. VOTING AT BOARD MEETINGS

(1) Each Director present at a Board meeting has one vote on any question arising at the meeting.

(2) A question arising at a Board meeting shall be decided by a majority of votes but, if there is an equality of votes, the person presiding at the Board meeting shall have a casting vote in addition to their deliberative vote.

(3) 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.

(4) If a secret ballot is needed, the presiding member must decide how the ballot is to be conducted.

49. MATERIAL PERSONAL INTEREST

Any Director of the Board who has a material personal interest as prescribed in section 42 or section 43 of the Act in relation to a matter being considered by the Board shall comply with the requirements of those provisions by declaring the interest and not being present while the matter is being considered at a Board meeting or vote on the matter.

50. MINUTES OF BOARD MEETINGS

(1) The Board must ensure that minutes are taken and kept at every 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 subrule 45(2);

(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.

(3) The Chairperson must ensure that the minutes of a Board meeting are reviewed and signed as correct by:

- (a) the Chairperson or presiding member of the meeting; or
- (b) the TK Incorporated Board members present at the next Board meeting. The previous minutes will be circulated prior to the meeting and at the meeting, approval as to their correctness will be sought from those who had attended the previous meeting. The names of the Board members who moved and seconded the minutes as correct will be recorded.

(4) When the minutes of a Board meeting have been signed as correct they are, unless and until the contrary is proved, evidence that:

- (a) the meeting to which the minutes relate was duly convened and held; and
- (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 Delegation

51. SUBCOMMITTEES

(1) The Board may appoint subcommittees and may delegate any of its delegable powers and responsibilities to such subcommittees. A subcommittee's decisions, recommendations or reports require adoption or approval by the Board before implementation by the Association unless the Board has specifically delegated authority to the subcommittee to act or implement actions without prior Board approval.

(2) The Board may not delegate to a subcommittee:

- (a) The power to delegate; or
- (b) A non-delegable duty.

(3) Any act or thing done by a subcommittee, under delegation from the Board has the same force and effect as if it had been done by the Board.

(4) The Board may at any time amend or revoke a delegation made to a subcommittee.

(5) A subcommittee may consist of the number of people, whether or not members, that the Board considers appropriate.

(6) The Board shall establish terms of reference for each subcommittee stating the purpose for which the subcommittee is established, how members are appointed to the subcommittee, any authorities or delegations made to the subcommittee, how the subcommittee is to report to the Board, and any other matters the Board sees fit.

(7) Each subcommittee shall conduct its meetings and business in accordance with the terms of reference approved by the Board.

Part 6 — General Meetings of the Association

52. ANNUAL GENERAL MEETING

(1) The Board must determine the date, time and place of the Annual General Meeting.

(2) If it is proposed to hold the Annual General Meeting more than six (6) months after the end of the Association's financial year, the Secretary must apply to the Commissioner for permission under section 50(3)(b) of the Act within four (4) months after the end of the 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 Association's activities during the preceding financial year; and
 - (ii) Audit and financial reports in accordance with the requirements of Division 3 of Part 5 of the Act.
- (c) to confirm the outcome of the election of Directors conducted under rule 36; and
- (d) if applicable, to appoint or remove a reviewer or auditor of the Association in accordance with the Act;

(4) Any other business of which notice has been given in accordance with these rules may be conducted at the Annual General Meeting.

53. SPECIAL GENERAL MEETINGS

(1) The Board may, at any time, convene a Special General Meeting.

(2) The Board shall, within twenty-eight (28) days of receiving a written request, from not less than ten percent (10%) of the ordinary members, convene a Special General Meeting for the purpose specified in that request.

(3) The ordinary members making a request for a Special General Meeting:

- (a) must do so by written notice addressed to the Secretary and
- (b) state in the notice the business to be considered at the meeting; and
- (c) each sign the notice.

(4) If the Board does not convene a Special General Meeting within that twenty-eight (28) day period, the ordinary members making the requirement (or any of them) may convene the Special General Meeting.

(5) A Special General Meeting convened under subrule 53(1) or subrule 53(4):

- (a) must be held within three (3) months after the date the original request was made; and
- (b) may only consider the business stated in the notice by which the requirement was made.

(6) The Association must reimburse any reasonable expenses incurred by the members convening a Special General Meeting under rule 53(4).

54. NOTICE OF GENERAL MEETINGS

(1) The Secretary or, in the case of a Special General Meeting convened under subrule 53(5), the members convening the meeting, must give to each member —

- (a) at least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting; or
- (b) at least 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; and
- (b) indicate the general nature of each item of business to be considered at the meeting; and
- (c) if a special resolution is proposed —
 - (i) set out the wording of the proposed resolution as required by section 51(4)

- of the Act; and
- (ii) state that the resolution is intended to be proposed as a special resolution; and
- (iii) comply with subrule 55(7).

55. PROXIES

- (1) Subject to subrule (2), an ordinary member may appoint an individual who is an ordinary member as the member's proxy to vote and speak on the member's behalf at a general meeting.
- (2) An ordinary member may be appointed the proxy for not more than three (3) other members, provided that there shall be no limit to the number of proxies able to be appointed to the Chairperson, Vice Chairperson, Secretary or Treasurer.
- (3) The appointment of a proxy must be in writing 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 the member's 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) If the Board has approved a form for the appointment of a proxy, the member may use that form or any other form:
 - (a) that clearly identifies the person appointed as the member's proxy; and
 - (b) that has been signed by the member.
- (7) Notice of a general meeting given to an ordinary member under subrules 54(1) and 53(2) must:
 - (a) state that the member may appoint an individual who is an ordinary 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.
- (8) A form appointing a proxy must be given to the Secretary before the commencement of the general meeting for which the proxy is appointed.
- (9) A form appointing a proxy sent by post or electronically is of no effect unless it is received by the Association not later than twenty-four (24) hours before the commencement of the meeting.

56. 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 online 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.

PRESIDING MEMBER AND QUORUM FOR GENERAL MEETINGS

- (1) The Chairperson or, in the Chairperson's absence, the Vice Chairperson must preside as Chairperson of each General Meeting.
- (2) If the Chairperson and Vice Chairperson are absent or are unwilling to preside at a general meeting, the Board members at the meeting must choose one of them to act as presiding member of the meeting.
- (3) At a general meeting five (5) members constitute a quorum. Members can be present in

person, by proxy or through technology under Rule 19. No business is to be conducted at a general meeting unless a quorum is present.

(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:
 - (i) the same time and day in the following week; and
 - (ii) the same place, unless the Chairperson specifies another place at the time of the adjournment or written notice of another place is given to the Members 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 ten (10) of the Association's ordinary Members are present at the meeting, those members present are taken to constitute a quorum.

58. 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 ordinary 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 fourteen (14) days or more, in which case notice of the meeting must be given in accordance with rule 54.

59. VOTING AT GENERAL MEETINGS

(1) On any question arising at a general meeting:

- (a) subject to subrule (6), each ordinary member has one vote; and
- (b) ordinary members may vote personally or by proxy.

(2) A copy of the document by which the appointment is made must be given to the Secretary before any general meeting to which the appointment applies.

(3) The appointment has effect until:

- (a) the end of all general meetings within the stated scope of the appointment; or
- (b) the appointment is revoked by the organisation and written notice of the revocation is given to the Secretary.

(4) Except in the case of a special resolution, a motion is carried if a majority of the ordinary members present at a general meeting vote in favour of the motion. A special resolution requires approval by seventy five percent (75%) of the total number of ordinary members that voted.

(5) If votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.

(6) If the question is whether or not to confirm the minutes of a previous general meeting, only members who were present at that meeting may vote.

- (7) For a person to be eligible to vote at a general meeting as an ordinary member, they:
- (a) must have been an ordinary member at the time notice of the meeting was given under rule 54, subrule 53(2) or subrule 53(4), as applicable; and
 - (b) must have paid any fee or other money payable to the Association by the member.

60. WHEN SPECIAL RESOLUTIONS ARE REQUIRED

- (1) A special resolution is required if it is proposed at a general meeting:
- (a) to affiliate the Association 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; or
 - (c) to alter the rules of the Association, including changing the name of the Association under sections 30(1) and 31 of the Act;
 - (d) to decide to apply for registration or incorporation as a prescribed body corporate under section 93(1) of the Act;
 - (e) to approve the terms of an amalgamation with one or more other incorporated Associations under section 102(4) of the Act;
 - (f) to be wound up voluntarily under section 121(2) of the Act or by the Supreme Court under section 124(a) and Schedule 4 item 9 of the Act;
 - (g) to cancel its incorporation under section 129 of the Act.
- (2) Subrule (1) does not limit the matters in relation to which a special resolution may be proposed.

61. 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; or
- (b) carried unanimously; or
- (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 3 other ordinary members present in person or by proxy:

- (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.
- (c) If a poll is demanded on the election of the chairperson or on a question of an adjournment, the poll must be taken immediately.

- (5) 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.

- (6) 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.

62. 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 ordinary members attending the meeting; and
 - (b) any proxy forms given to the Secretary in relation to the meeting under subrule 55(8); and
 - (c) the financial statements or financial report presented at the meeting, as referred to in subrule 52(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 subrule 51(3)(b)(ii).
- (4) The minutes of a general meeting must be entered in the Association's minute book or other system approved by the Board 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, unless and until the contrary is proved, taken to be proof that:
 - (a) the meeting to which the minutes relate was duly convened and held; and
 - (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 — General matters

63. BY-LAWS

- (1) The Association 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 category of associate membership approved under subrule 11(2); and
 - (b) impose restrictions on the Board's powers, including the power to dispose of the Association's assets; and
 - (c) impose requirements relating to the financial reporting and financial accountability of the Association and the auditing of the Association's accounts; and
 - (d) provide for any other matter the Association 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 these rules.
- (4) Without limiting subrule (3), a by-law made for the purposes of subrule (2)(c) may only impose requirements on the Association that are additional to, and do not restrict, a

requirement imposed on the Association under Part 5 of the Act.

(5) At the request of a member, the Association must make a copy of the by-laws available for inspection by the member.

64. RATIFYING BINDING DOCUMENTS

(1) The Association may ratify a document and bind the association without using a common seal if the document is signed by—

(a) 2 Directors; or

(b) 1 Director and a person authorised by the Board; or

(c) by such other persons to whom the Board has delegated the authority to sign the specific document or the class of documents to which the document belongs.

(2) The record of Board members and other persons authorised to act on behalf of the Association that is required to be maintained under section 58(2) of the Act must be kept in the Secretary's custody or under the Secretary's control.

65. GIVING NOTICE TO MEMBERS

(1) In this rule—

Recorded means recorded in the register of members.

(2) A notice or other document that is to be given to a member under these rules is taken not to have been given to the member unless it is in writing and:

(a) delivered by hand to the recorded address of the member; or

(b) sent by prepaid post to the recorded postal address of the member; or

(c) sent by facsimile or electronic transmission to an appropriate recorded number or recorded electronic address of the member.

66. CUSTODY OF BOOKS AND SECURITIES

(1) The Board is responsible for ensuring that appropriate arrangements are in place to ensure the safety and security of the Associations financial and other records.

(2) The books of the Association must be retained for at least seven (7) years.

67. INSPECTION OF RECORDS

(1) A member may, by arrangement with the Secretary or other person authorised by the Board, inspect:

(a) the financial records of the Association; and

(b) subject to subrule (3), the minutes of any Board meeting.

(2) The inspection will be without charge.

(3) If the member wants to inspect a document that records the minutes of a Board or sub-committee meeting, the right to inspect that document is subject to any decision the Board has made about minutes of Board and sub-committee meetings generally, or the minutes of a specific Board or sub-committee meeting, being available for inspection by members.

(4) The member may make a copy of or take an extract from a record or document referred to in subrule (1) but does not have a right to remove the record or document for that purpose.

(5) The member must not use or disclose information in a record or document referred to in subrule (1) except for a purpose —

(a) that is directly connected with the affairs of the Association; or

(b) that is related to complying with a requirement of the Act.

(6) This rule does not confer a right to access information that is personal information as defined in section 6 of the *Privacy Act 1988* unless such access is permitted under the *Australian Privacy Principles* set out in Schedule 1 of that Act.

68. DISSOLUTION AND DISTRIBUTION OF PROPERTY

(1) The Association may be wound up by a special resolution passed by the ordinary members present at a duly convened general meeting.

(2) If, on the winding up of the Association, any property of the Association remains after satisfaction of the debts and liabilities of the Association and the costs, charges and expenses of that winding up, that property shall be distributed to another incorporated association having objects similar to those of the Association, or for charitable purposes, which incorporated association or purposes, as the case requires, shall be determined by resolution of the members when authorising and directing the Board under Section 133 of the Act to prepare a distribution plan for the distribution of the surplus property of the Association.

(3) Upon the winding-up or dissolution of the public fund listed on the Register of Cultural Organisations and after satisfaction of all its debts and liabilities, any property, the property shall not be paid to or distributed among its members, but shall be given or transferred to some other incorporated association having objects similar to the objects of this public fund, and whose rules shall prohibit the distribution of its or their income among its or their members, such incorporated association to be eligible for tax deductibility of donations under Subdivision 30-B, section 30-100, of the *Income Tax Assessment Act 1997*.

69. ALTERATION OF RULES

If the Association wants to alter or rescind any of these rules, or to make additional rules, the Association may do so only by special resolution and by otherwise complying with Part 3 Division 2 of the Act.