

THE CONSTITUTION

OF THE

PERFORMING ARTS

CENTRE SOCIETY (INCORPORATED.)

ABN 26 252 073 745

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CONSTITUTION

DATED

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

In this Constitution, unless the context otherwise requires:

“**Act**” means *The Associations Incorporation Act 2015* (WA) as amended, modified or re-enacted from time to time.

“**Annual General Meeting**” means the meeting required by section 50 of the Act to be held once in each year within 6 months of the end of the Financial Year to which all Ordinary and Honorary Life Members are invited.

“**Association**” means the PERFORMING ARTS CENTRE SOCIETY (INCORPORATED.) ABN 26 252 073 745.

“**Board**” means the Board of the Association provided for in Clause 6 of this Constitution.

“**Board Member**” means an Elected Board Member or a Selected Board Member and Board Members includes any of them.

“**Elected Board Member**” means a member elected to the Board by the Members of the Association.

“**Eligible Person**” means any person who is working in, or has a special interest in, the entertainment industry or the performing arts.

“**Executive**” means the executive of the Board of the Association as provided for in clause 6.1 of this Constitution.

“**Executive Director**” means the executive director of the Association appointed in accordance with clause 7.2 of this Constitution.

“**Financial Year**” means a calendar year – 1 January to 31 December.

“**General Meeting**” means either an Annual General Meeting or a Special General Meeting.

“**Member/s**” means the person/s who are admitted as members of the Association pursuant to Clause 4 hereof.

“**Prescribed Annual Fee**” means the fee payable annually as determined pursuant to clause 4.12.

“**Returning Officer**” means the person appointed pursuant to clause 5.7(a) of this Constitution.

“Selected Board Members” means individuals selected by the Board in accordance with clause 6.7.

“Special General Meeting” means all meetings of Members other than the Annual General Meeting.

“Special Resolution” means a resolution of the Association passed in accordance with section 51 of the Act.

1.2 Acts of the Association

A reference to any action which the Association may take means an action resolved upon in accordance with this Constitution by a properly convened meeting of the Members of the Association.

1.3 Acts of the Board

A reference to any action which the Board may take means an action resolved upon in accordance with this Constitution by a properly convened meeting of the Board.

1.4 Plural and Gender of Words

In this Constitution, unless inconsistent with the subject matter or context words denoting one gender shall include the other genders and words importing the singular number shall include the plural number and vice versa.

1.5 Statutory Enactments

In this Constitution, reference to any statutory enactment shall be construed as a reference to that enactment as amended, modified or re-enacted from time to time.

1.6 Headings

Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

1.7 Correspondence

All correspondence from the Association may be emailed to Members if the Member has provided their email address to the Association and the Member has provided written notice of their preference to receive correspondence by email. Accordingly, any reference to “post” in this Constitution includes “email”.

2. ESTABLISHMENT, CHANGE AND WINDING UP

2.1 Name and Registered Office

The name of the Association shall be the “PERFORMING ARTS CENTRE SOCIETY (INCORPORATED.)” and its registered office shall be at Artshouse, 53 James Street, Northbridge.

2.2 Members may be Paid for Services

Notwithstanding the provisions of clause 3.1, the Board may make a payment in good faith to a Member by way of remuneration to that Member or for a service rendered by or property acquired from that Member in a special, or private capacity.

2.3 Alteration to the Constitution

(a) The Association may, by a Special Resolution:

- (i) amend, alter or add to this Constitution; or
- (ii) repeal this Constitution and adopt a new Constitution;

and the notice of such General Meeting shall contain a text of the proposed change or may refer to and annex a full draft of the proposed change and any such change and amendment shall be subject to any approval required under the Act.

(b) An alteration of the Constitution does not take effect until:

- (i) the notice requirements under sections 30 to 33 of the Act have been complied with; and
- (ii) the Australian Taxation Office has been notified in writing of the alterations.

(c) The Association shall cause any required statutory and regulatory notifications of the amendments to be made within the prescribed time periods.

2.4 Constitution Binds every Member of the Association

This Constitution binds every Member of the Association to the same extent as if every Member of the Association had signed and sealed this Constitution and agreed to be bound by all its provisions.

2.5 Validation of Acts

Every act of the Association and the Board and every appointment made by each, shall be deemed to be fully valid and effective, notwithstanding any defect in the notice of the meeting, or in the meeting procedure, at which the same was resolved upon, except if annulled by a Special General Meeting called for that purpose within one (1) month of the act or appointment in issue.

2.6 Winding up the Association

The Association may be wound up by a Special Resolution.

2.7 Surplus Property after Winding Up

(a) If, after the winding up of the Association, any surplus property remains after satisfaction of debts and liabilities to the Association and the costs, charges and expenses of that winding up, that property must not be paid or distributed to the Members, but must be given or transferred to another association incorporated under the Act having objects similar to those of the Association (provided the rules

of the other incorporated association shall prohibit distribution to its members of surplus property after winding up) and which has been endorsed by the Commissioner of Taxation as a tax exempt body and a deductible gift recipient for the purposes of any Commonwealth Taxation Act.

- (b) The incorporated association shall be chosen by resolution of the Members authorising and directing the Board under section 24 of the Act to prepare a distribution plan for the distribution of the surplus property of the Association.

3. OBJECTS AND POWERS

3.1 Objects

The objects of the Association shall be:

- a) The Association is a not for profit incorporated association. 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 of the association, except in good faith in the promotion of those objects or purposes.
- b) to provide resources and services in support of the development of the performing arts and performing arts practitioners and in particular theatre arts and theatre arts practitioners;
- c) to conduct and manage a facility and other suitable rooms, buildings and places such as will contain or provide for:
 - (i) a meeting place;
 - (ii) an information centre/office space;
 - (iii) a performance space or spaces;
 - (iv) a workshop space; and
 - (v) a teaching/educational space;
- d) to create a sense of unity among the community by encouraging communication and interaction between performers in a social non-partisan atmosphere;
- e) to promote issues of common interest;
- f) to encourage the development of self-initiated projects by members of the Association or members of the community;
- g) to encourage the development of professional skills through workshops and courses;
- h) to operate as a venue for national and international visitors to meet the local community in a formal or informal capacity; and
- i) to promote legislation to foster the objects of the Association.

3.2 Powers

The Association shall have all the powers of an association granted under the Act and all the powers of a natural person and without limiting the above shall have the following powers, exercisable solely to attain and promote the Objects of the Association:

- a) to purchase, take on lease or hire or otherwise acquire and maintain any real or personal property;
- b) to sell, exchange, lease, agist, mortgage, hire, dispose of or otherwise deal with all or any part of the real and personal property of the Association;
- c) to erect or lease and maintain a building or buildings, containing a performance space or spaces on any lands of the Association provided that in case the Association shall take or hold any property which may be subject to any trusts in the Association shall deal only with the same in such manner as is allowed by law having regard to such trusts;
- d) to borrow or raise or secure the payment of money in such manner as the Board shall determine with power to grant mortgages, charges or any security upon or charging all or any of the property of the Association whether real or personal and to liquidate, redeem or pay off any existing or future security;
- e) to invest and deal with the moneys of the Association not immediately required for the purposes of the Association in such manner as may from time to time be determined by the Board, or as required under any Statutory enactment or regulation;
- f) to affiliate and co-operate with any other association having objects wholly or in part similar to those of the Association;
- g) to make regulations not inconsistent with this Constitution for the conduct and guidance of Members and for the regulation and prohibition of acts of Members and for the carrying out and conduct of the objects and activities of the Association;
- h) to employ officers and employees and to pay them salaries, wages, gratuities, superannuation and other entitlements, as appropriate;
- i) to enter into any contracts or agreements with any persons, institutions or bodies for the purposes of the objects or attainment of the objects of the Association;
- j) to enter into any arrangements with any government or authority, supreme, municipal, local or otherwise that may seem conducive to the Association's objects or any of them; and to obtain from any such government or authority any rights, privileges and concessions which the Association may think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- k) to borrow or raise or secure the payment of money in such manner as the Association may think fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the Association in any way and in particular by the issue of debentures, perpetual or otherwise charged upon all or any of the Association's property (both present and future) and to purchase, redeem or pay off any such securities;

- l) to apply for and maintain any liquor licence, food and beverage licence, or any other licence for the sale or serving of refreshments as the Board from time to time may deem expedient; and
- m) to receive gifts of money or property, and to set up funds, accounts and do other things as necessary, in accordance with sub-clause 3.3.

3.3 Gifts of Money or Property

- a) The Association shall establish a fund (the "public fund") to which members of the public shall be invited to and shall contribute gifts of money or property for the objects of the Association, and in the administration of which the public shall participate.
- b) The public fund and its administration shall comply with the requirements of the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).
- c) Any gifts of money or property to the Association for its objects, and any money received because of such gifts, shall be credited to the public fund. The public fund shall not receive any other money or property. For the avoidance of doubt, the public fund forms part of the assets of the Association.
- d) The money or assets of the public fund shall only be used for the objects, and shall not be distributed to Members or Board Members of the Association except as reimbursement for proper administrative expenses or in furtherance of the objects.
- e) Receipts for gifts received by the public fund must be issued in the name of the public fund.
- f) The public fund must be managed by the Board or by a specifically appointed sub-committee, which at all times must have a majority of members that have a degree of responsibility to the general community.
- g) If, upon the winding-up or dissolution of the public fund or the public fund's endorsement as a deductible gift recipient being revoked, there remains after satisfaction of all its debts and liabilities any property, the property must not be paid to or distributed among the Members, but must be given or transferred to some other fund, authority or institution having objects similar to the objects of the Association, and whose rules shall prohibit the distribution of its or their income among its or their members, and such fund, authority or institution must be endorsed as a tax exempt body and a deductible gift recipient under Subdivision 30-B, section 30-100 of the *Income Tax Assessment Act 1997* (Cth) and listed on the Register of Cultural Organisations maintained under the Act.

4. MEMBERSHIP

4.1 Types of Membership

There shall be three (3) types of Members, namely:

- (a) Ordinary Members;
- (b) Honorary Life Members; and

- (c) Reciprocal Members.

PROVIDED ALWAYS that only Ordinary Members and Honorary Life Members shall have voting rights at any meeting of the Association as the Board may from time to time determine.

4.2 Eligibility to Apply for Membership and Types of Members

- (a) An Eligible Person may apply for the following categories of membership:
- (i) Ordinary Members are individuals; or
 - (ii) Reciprocal Members are bodies corporate.
- (b) The Board may, by ordinary resolution, elect to bestow Honorary Life Membership upon an Ordinary Member for their outstanding contribution to the Association following receipt of a written nomination by another Ordinary Member.

4.3 Application for Membership

Any Eligible Person must apply in the form (if any) from time to time prescribed by the Board to become an Ordinary Member or Reciprocal Member of the Association, which form (if any) shall contain such particulars, information and undertakings as the Board shall from time to time determine and further, shall be accompanied by the membership fee, applicable to the relevant category of membership, as determined by the Board from time to time.

4.4 Admission to Membership

Any Eligible Person who applies to become a Member of the Association may be admitted to the appropriate category of membership by the Board, and remain so for the period of twelve (12) months from and including the date of admission to membership (unless a specific expiry date is advised as part of the application process) or until termination in accordance with sub-clauses 4.9 or 4.10 hereof, or until termination because of non-payment of the Prescribed Annual Fee within the period hereinbefore specified **PROVIDED THAT** the Board shall have the right and be at liberty to refuse to admit any Eligible Person to membership of the Association without giving or assigning any reasons for such refusal.

4.5 Privileges of Honorary Life Membership

Honorary Life Members admitted to membership by the Board remain so until termination in accordance with sub-clauses 4.9 or 4.10 hereof.

Honorary Life Members are exempt from payment of the Prescribed Annual Fee.

4.6 Privileges of Ordinary and Honorary Life Members

Unless otherwise excluded from doing so by any other provision of the Constitution, any Member by virtue of being an Ordinary or Honorary Life Member, (and no person other than a Member except when specifically permitted) may:

- (a) receive (at their postal or electronic mail address recorded in the register of Members) any notice of any General Meeting of the Association;

- (b) attend any General Meeting of the Association, and exercise one vote in respect of any motion put to a vote at any such meeting;
- (c) be eligible to be nominated and elected in accordance with the Constitution to be a Board Member;
- (d) attend, or participate in, such functions, events or activities for Members as the Association or the Board may organise for Members generally; and
- (e) utilise such facilities as are made available for Members of the Association to utilise generally.

4.7 Privileges of Reciprocal Members

A Reciprocal Member has the rights of an Ordinary Member, however is specifically excluded from:

- (a) voting on any motion put to a vote at any special or general meeting; and
- (b) being eligible to be nominated and elected in accordance with the Constitution to be a Board Member.

4.8 Limitation on Members being Board Members

- (a) A Member who is under 18 years of age is ineligible to be nominated and elected as a Board Member pursuant to clause 4.6(c).
- (b) A Member who is also an employee of the Association (not being a casual employee or contractor) is ineligible to be nominated and elected as a Board Member pursuant to clause 4.6(c) for a period of 2 years following cessation of employment.
- (c) A Board Member who becomes an employee of the Association for a period of greater than three (3) months is deemed to have resigned from the Board immediately upon accepting an offer of employment.

4.9 Expulsion of Members

- (a) If a Member:
 - (i) wilfully breaches a provision of the Constitution, a by-law or regulation of the Association made pursuant to the powers contained in the Constitution, or a condition of membership which he or she is bound to observe, on two (2) or more occasions after being called upon in writing or verbally by the Board not to do so; or
 - (ii) acts in a manner which, in the opinion of the Board, is contrary to the interests and objects of the Association, or whose conduct and actions are or may injure or discredit the Association, the Members thereof, or to defeat the objects of the Association;
 - (iii) has debts due to the Association which have been outstanding for more than 90 days; or

- (iv) receives a written complaint by another Member, accompanied by a Statutory Declaration made by that Member setting out all the relevant facts,

then the Board, or a committee of the Board appointed for that purpose, must communicate by notice in writing to the Member (provided in person, by post, facsimile, electronic mail or other electronic means):

- (v) notice of the proposed expulsion and of the time, date and place of the Board Meeting at which the question of that expulsion will be decided; and
- (vi) particulars of that conduct,

not less than thirty (30) days before the date of the said Board Meeting.

- (b) At the Board meeting at which the question of expulsion will be decided, the Board may, in its absolute discretion and after affording the Member complained of an opportunity to hear or read the charge and defend or explain, in person, his or her conduct:
 - (i) suspend for a fixed period that Member from membership of the Association;
 - (ii) expel completely that Member from membership of the Association; or
 - (iii) retain the membership of the Member with such conditions as the Board sees fit.
- (c) The Board must forthwith, after deciding whether or not to expel a Member who is dealt with under sub-clause 4.9(b), communicate that decision in writing to that Member.
- (d) Subject to sub-clause 4.9(f), a Member who is expelled under sub-clause 4.9(b) from membership of the Association ceases to be a Member fourteen (14) days after the day on which the decision so to expel him or her is communicated to him or her.
- (e) If a Member who is expelled under sub-clause 4.9(b) from membership of the Association wishes to appeal against the expulsion, he or she must give notice to the Secretary of his or her intention to do so within fourteen (14) days after receipt of the notice referred to in sub-clause 4.9(c).
- (f) When Notice is given pursuant to sub-clause 4.9(e):
 - (i) the Association in General Meeting may, after having afforded the Member who gave that notice a reasonable opportunity to be heard by, or to make representations in writing to the Association in the General Meeting confirm or set aside the decision of the Board to expel that Member; and
 - (ii) the Member who have that notice does not cease to be a Member unless and until the decision of the Board to expel him or her is confirmed under this clause.

4.10 Termination of Membership

A Member automatically ceases to be a Member in any of the following circumstances:

- (a) upon his or her death;
- (b) upon notification in writing by the Member to the Board of his or her resignation, which resignation shall take effect upon the date of receipt of that notice by the Board;
- (c) upon his or her expulsion in accordance with sub-clause 4.9(b) hereof; or
- (d) (unless the Board at any time in a particular case, otherwise determines), upon the expiration of the period of one (1) month after the last Prescribed Annual Fee due by him or her became due and remains unpaid, subject to his or her having had forwarded to his or her last known address, a notice that his or her Prescribed Annual Fee, is due for payment.

4.11 Details and register of Members

- (a) Members shall be asked to provide their name, postal address, residential address, facsimile number and email address.
- (b) The Board shall keep a register of Members which, notwithstanding subclause (a) above, shall only set forth the name, postal address, residential address and nature of membership of each Member.

4.12 Fees

The Prescribed Annual Fee as determined by the Board (the “Prescribed Annual Membership Fee”) shall become due and payable annually to the Association as provided for in clause 4.4.

4.13 Inspection of Records etc of Association

A Member may at any reasonable time inspect without charge the books, documents, records and securities of the Association.

4.14 Dispute Resolution

Should a dispute arise between members or between one or more members and the Association, the parties must:

- (a) attempt to resolve the dispute between themselves within 14 days after the dispute has come to the attention of each party.
- (b) If the parties are unable to resolve the dispute between themselves within 14 days, any party to the dispute may give written notice to the secretary of-
 - (i) the parties to the dispute: and
 - (ii) the matters that are the subject of the dispute.
- c) Within 42 days after the secretary is given the notice, a Board meeting must be convened to consider and determine the dispute.

- d) 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 7 days before the meeting is held.
- e) The notice given to each party must state –
 - (i) when and where the Board meeting is to be held; and
 - (ii) 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 committee about the dispute.
- f) If the dispute is between one or more members and the Association; and any party gives written notice to the secretary stating that the party does not agree to the dispute being determined by the committee, the party can request a mediator.

4.15 Dispute Resolution by Mediator

- a) The appointment of a mediator is an agreed upon independent party that has no personal interest in the matter or any bias towards the parties in dispute.
- b) If there is no agreement on the mediator, then the Board must appoint the mediator who acts as a mediator for another not-for-profit, such as a community legal centre.
- c) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- d) 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 5 days before the mediation takes place.
- e) In conducting the mediation, the mediator must –
 - (i) Give each party to the mediation every opportunity to be heard; and
 - (ii) Allow each party to the mediation to give due consideration to any written statement given by another party; and
 - (iii) Ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- f) The mediator cannot determine the matter that is the subject of mediation.
- g) The mediator 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.
- h) The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.

5. MEETINGS OF MEMBERS

5.1 General Meetings

The Board:

- (a) must convene the Annual General Meeting within the time limits provided for the holding of annual general meetings by section 50 of the Act;
- (b) may at any time of its own resolution convene a Special General Meeting; and
- (c) must, within thirty (30) days of:
 - (i) receiving a request in writing to do so from not less than 5% of members, convene a Special General Meeting for the purpose specified in that request; and
 - (ii) the Secretary receiving a notice under sub-clause 4.9(e), convene a Special General Meeting for the purpose of dealing with the appeal to which that notice relates.

5.2 Special General Meetings

- (a) The Members making a request referred to in sub-clause 5.1(c)(i) shall:
 - (i) state in that request the purpose for which the Special General Meeting concerned is required; and
 - (ii) sign that request.
- (b) If a Special General Meeting is not convened within the relevant period of thirty (30) days referred to:
 - (i) in sub-clause 5.1(c)(i), the Members who made the request concerned may themselves convene a Special General Meeting as if they were the Board; or
 - (ii) in sub-clause 5.1(c)(ii), the Member who gave the notice concerned may himself or herself convene a Special General Meeting as if he or she were the Board.
- (c) When a Special General Meeting is convened under sub-clause 5.2(b):
 - (i) the Board shall ensure that the Members convening the Special General Meeting are supplied free of charge with particulars of all Members; and
 - (ii) the Association shall pay the reasonable expenses of convening and holding the Special General Meeting.

5.3 Minutes of Meetings of Association

- (a) The Secretary shall cause proper minutes of all proceedings of all General Meetings and Board Meetings to be taken and then to be entered within forty two (42) days

after the holding of each General Meeting or Board Meeting, as the case requires, in a minute book kept for that purpose.

- (b) The Chairperson shall cause the minutes taken of a General Meeting or Board Meeting under sub-clause 5.3(a) to be checked and signed as correct by the Chairperson of the General Meeting or Board Meeting to which those minutes relate or of the next succeeding General Meeting or Board Meeting, as the case requires.
- (c) When minutes have been entered and signed as correct under this clause, they shall, until the contrary is proved, be evidence that:
 - (i) the General Meeting or Board Meeting to which they relate (in this clause called the “Meeting”) was duly convened and held;
 - (ii) all proceedings recorded as having taken place at the Meeting did in fact take place thereat; and
 - (iii) all appointments or elections purporting to have been made at the Meeting have been validly made.

5.4 Voting Rights of Members of Association

Each Ordinary Member and Honorary Life Member present in person or by proxy at a General Meeting is entitled to a deliberative vote.

5.5 Proxies of Members of Association

A Member (in this clause called the “Appointing Member”) may appoint in writing another Member who is a natural person to be the proxy of the Appointing Member and to attend and vote on behalf of the Appointing Member at any General Meeting.

5.6 Voting at General Meetings

Any resolution at a General Meeting of Members shall except where otherwise provided in this Constitution, be carried if voted for by a simple majority of those Members (or their proxy) present in person entitled to vote, and voting.

5.7 Appointment of Returning Officer

- (a) The Secretary must appoint a person to act as the returning officer to oversee voting on elections and motions and he or she shall have an absolute discretion to allow any discrepancy in procedure which he or she regards as insubstantial.
- (b) Upon completion of the counting of the votes, the Returning Officer shall convey the results to the Chairperson of the relevant General Meeting (whether or not the meeting shall have concluded), and the Chairperson shall declare the result.
- (c) In the case of a postal vote pursuant to clause 6.6, the Returning Officer shall comply with the procedure in clause 6.6(d).

5.8 Period of Notice of General Meetings

The Board shall give notice (in accordance with sub-clause 5.9 hereof) of a General Meeting at least fourteen (14) days prior to the date set down for the General Meeting.

5.9 Notices of Meetings of Members

- (a) The Association may give the notice of a General Meeting to a Member:
 - (i) personally;
 - (ii) by sending it by post to the address for the Member in the register or the alternative address (if any) nominated by the Member;
 - (iii) by sending it to the facsimile number or electronic address (if any) nominated by the member; or
 - (iv) by sending it by other electronic means.
- (b) Notices of General Meetings shall state:
 - (i) the nature of the business to be dealt with at such meeting, unless otherwise determined by the Board because of reasons of confidentiality or expediency; and
 - (ii) when and where the General Meeting concerned is to be held.
- (c) A signature to any notice given by the Association to a Member under this rule 5.9 may be in writing, facsimile printed, PDF printed or affixed by some mechanical, electronic or other means.
- (d) The accidental omission to give notice or non-receipt of a notice of a General Meeting by any Member shall not invalidate the proceedings at any General Meeting.
- (e) Any prior period of notice required for any General Meeting shall be exclusive of the day on which such notice is served or deemed served and exclusive of the day on which the General Meeting is to be held.

5.10 When Notice is Given

- (a) A notice of meeting sent by post is taken to be given on the second business day after it is posted.
- (b) Except as provided by rule 5.10(e), a notice of meeting sent by facsimile is taken to be given at the time the facsimile is sent if the correct facsimile number appears on the facsimile transmission report produced by the Association's facsimile machine.
- (c) Except as provided by 5.10(e), a notice of meeting sent by electronic mail is taken to be given at the time the electronic mail is sent.
- (d) Where a notice of meeting is given to a Member under rule 5.9(a)(iii) and is sent after 5.00pm, the notice is taken to be given the following business day.
- (e) Notice of meeting given to a Member given under 5.9(a) is not effective if:
 - (i) In the case of service by facsimile, the Association's facsimile machine issues a transmission report which shows that the transmission was unsuccessful;

- (ii) In the case of service by electronic mail, the Association receives a message indication that the delivery notice has failed; or
 - (iii) In the case of service by facsimile or electronic mail, the addressee notifies the Association immediately that the notice was not received in legible form.
- (f) A certificate signed by a secretary or member of the Board that the notice was posted, mailed electronically, or given in accordance with 5.10 is conclusive evidence of the matter.

5.11 Use of Technology to be Present at Board Meetings

- (a) The presence of a board member at a board meeting need not be by attendance in person but may be by that board member and each other board member at the meeting being simultaneously in contact by telephone to other means of instantaneous and confidential communication
- (b) A member who participates in the board meeting as allowed under subrule (a) 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.

5.12 Quorum at General Meetings

A quorum at the Annual General Meeting and at any Special General Meeting shall be 5% of Members present and entitled to vote.

5.13 Procedure if No Quorum

If within thirty (30) minutes from the meeting time appointed, no quorum shall be present, then:

- (a) at the Annual General Meeting or at a Special General Meeting convened by the Board it shall be adjourned until the same time on the same day of the following week at which adjourned meeting the same requirements as to a quorum shall be necessary; or
- (b) at a Special General Meeting convened upon a requisition of the Members, then it shall lapse until reconvened with the appropriate form and period of notice.

5.14 Business of the Annual General Meeting

At the Annual General Meeting, the Association shall transact the following business in the following order:

- (a) circulate the Notice of Meeting;
- (b) recording of apologies;
- (c) confirmation (by resolution) of the Minutes of the previous Annual General Meeting;
- (d) confirmation (by resolution) of the Minutes of all Special General Meetings (if any) since the previous Annual General Meeting;

- (e) reading of a Report of the Chairperson to the Association on the activity of the Association during the preceding Association Year;
- (f) reading or tabling, and adoption or other disposal (by resolution) of, the accounting reports described in sub-clause 7.11 of this Constitution;
- (g) announcing the election of Board Members in place of those retiring; and
- (h) any special business of which fourteen (14) days' prior written notice has been given.

5.15 Chairperson of General Meetings

- (a) The Chairperson of the Association, or in his or her absence a Board Member elected by the Board, shall act as chairperson of any Annual or Special General Meeting.
- (b) If the Chairperson is absent and no Board Members are present at a Special General Meeting, a Member appointed by the Members present and entitled to vote shall act as chairperson of the Special General Meeting.

5.16 Chairperson's Powers

The Chairperson of all General Meetings shall:

- (a) have a casting vote (in addition to his or her own vote) in the case of an equality of votes;
- (b) decide the order of business (subject to the provisions of clause 5.14);
- (c) decide all points of order; and
- (d) decide whether a vote (except election of Board Members) shall be on voices alone or also on show of hands, except when any one Member demands a written ballot.

6. THE BOARD

6.1 Office Bearers

- (a) The Board shall consist of the following office bearers:
 - (i) not less than three (3) or more than six (6) Elected Board Members; and
 - (ii) not more than four (4) Selected Board Members provided that the number of Selected Board Members is always less than the number of Elected Board Members.
- (b) The Executive of the Board consists of the Chairperson, the Deputy Chairperson (if any), the Secretary, and the Treasurer.
- (c) At the first full Board meeting after the Annual General Meeting:
 - (i) the Chairperson and the Secretary shall be elected by the Board; and
 - (ii) the Board may elect a Deputy Chairperson.

- (d) The Treasurer may be elected by the Board, or may be a Selected Board Member.

6.2 Secretary

The Secretary shall:

- (a) co-ordinate the correspondence of the Association;
- (b) keep full and correct minutes of the Board Meetings and General Meetings as set out in sub-clause 5.3;
- (c) comply on behalf of the Association with:
 - (i) section 53 of the Act in respect of the register of Members of the Association;
 - (ii) section 35 of the Act in respect of the rules of the Association; and
 - (iii) section 58 of the Act in respect of the record of the office holders and any trustees of the Association;
- (d) have responsibility for all books, documents, records and registers of the Association, including those referred to in paragraph (c);
- (e) perform such other duties as are imposed by these rules on the Secretary; and
- (f) in his or her absolute discretion and with the permission of the Board delegate day to day duties of the Secretary outlined in paragraphs (a), (b), (c) and (d) hereof to such persons as the Board may, from time to time, approve.

6.3 Treasurer

The Treasurer shall:

- (a) be responsible for the receipt of all moneys paid to or received by, or by him or her on behalf of, the Association and shall be responsible for issuing receipts for those moneys in the name of the Association;
- (b) be responsible for the payment of all moneys referred to in paragraph (a) into such account or accounts of the Association as the Board may from time to time direct;
- (c) be responsible for the payment of all invoices and moneys payable from the funds of the Association and in so doing, must ensure that all cheques are signed by two (2) persons authorised representatives as designated by the Board;
- (d) comply on behalf of the Association with sections 66, 74 and 76 of the Act in respect of the accounting records of the Association;
- (e) whenever directed to do so by the Chairperson, submit to the Board a report, balance sheet or financial statement in accordance with that direction;
- (f) have responsibility for all securities, books and documents of a financial nature and accounting records of the Association, including those referred to in paragraphs (d) and (e);

- (g) perform such other duties as are imposed by these rules on the Treasurer; and
- (h) in his or her absolute discretion and with the permission of the Board delegate day to day duties of the Treasurer outlined in paragraphs (a), (b) and (c) hereof to such persons as the Board may, from time to time, approve.

6.4 Election of the Board

The following provisions shall apply to the election of office bearers of the Board:

- (a) Elected Board Members are elected at the Annual General Meeting;
- (b) Elected Board Members serve a term of two (2) years subject to clause 6.5;
- (c) Selected Board Members serve a term of one (1) year and are selected as per clause 6.7;
- (d) Board Members are eligible for re-election for successive terms without limitation;
- (e) Board Members must be Ordinary Members or Honorary Life Members of the Association;
- (f) the Board must call for nominations for Board Members at least ten (10) weeks prior to the date set down for the Annual General Meeting;
- (g) nominations for election as a Board Member shall be proposed and seconded by Members of the Association within fourteen (14) days of the call for nomination;
- (h) the Board must notify nominated Members of their nomination within seven (7) days of the nomination;
- (i) to accept their nomination, nominated Members must submit their biography to the Board for distribution within fourteen (14) days of notification of their nomination and shall be known as a "Nominated Candidate";
- (j) if the number of nominations does not exceed the number of vacancies available on the Board the Chairperson of the following Annual General Meeting shall declare the Nominated Candidate(s) duly elected to the Board at that Annual General Meeting.

6.5 Method of Election of the Board

- (a) In the event that there are more Nominated Candidates than vacancies, a postal poll shall be held in accordance with clause 6.6.

6.6 Postal Voting

- (a) A postal poll of the Members of Association entitled to vote must be held.
- (b) The postal poll must be conducted as a secret poll.
- (c) All correspondence in relation to the postal poll may be emailed to Members entitled to vote if the Member has provided their email address to the Association. Accordingly, for the purpose of sub-clause 6.6 and subject to this sub-clause 6.6(c), any reference to "post" includes "email".

- (d) Within fourteen (14) days of determining that an election is required and receipt of Nominated Candidates' biographies, the Board must post a voting paper to each Member of the Association who is entitled to exercise a vote on the postal poll. That voting paper must include:
 - (i) details of each Member nominated for election and the biography provided by the Member;
 - (ii) details of the number of Board members to be elected;
 - (iii) instructions on how to vote; and
 - (iv) the date and time prior to which the vote must be received, which must not be less than fourteen (14) days from the date on which the voting paper was posted to members.
- (e) The Nominated Candidates elected to the Board are the number of Nominated Candidates, equal to the available Board positions, who receive the most votes;
- (f) Once the votes have been counted, the Returning Officer must report the result to the Chairperson who must declare results of the election at the next Annual General Meeting.

6.7 Selected Board Members

- (a) Selected Board Members may be selected by the Board at or after the first Board meeting after the Annual General Meeting.
- (b) The Selected Board Members are determined by the Board based on knowledge, skills & expertise gaps that may arise from time to time in the Board's composition taking into account the strategic needs and business environment at the time.

6.8 Vacancies

If a casual vacancy occurs on the Board then the Board may appoint a Member of the Association to fill the vacancy, but the Board may continue to act notwithstanding any vacancy in their body.

A casual vacancy occurs in the office of the Board and that office becomes vacant if a Board Member-

- (a) dies;
- (b) resigns by notice in writing delivered to the Chairperson or, if the Board Member is the Chairperson, to the vice chairperson and that resignation is accepted by resolution of the Committee;
- (c) is convicted of an offence under the Act;
- (d) is permanently incapacitated by mental or physical ill-health;
- (e) is absent from more than-
 - (i) three consecutive Board meetings; or

- (ii) three Board meetings in the same financial year without tendering an apology to the person presiding at each of those Board meetings;

of which meetings the Member received notice, and the Board has resolved to declare the office vacant;

- (f) ceases to be a Member of the Association; or
- (g) is the subject of a resolution passed by a general meeting of Members terminating his or her appointment as a Board member.

6.9 Limitation on Period of Chairpersonship

A Member shall not be eligible to be elected as the Chairperson of the Association in respect of more than six (6) full Association Years whether consecutive or otherwise.

6.10 Meetings of the Board

- (a) The Board may meet at such place and at such times as it shall think fit, and any two (2) Board Members may convene a meeting of the Board by seven (7) days' prior written notice. Notice of a Board meeting may be given in person, by post, facsimile, electronic mail or other electronic means.
- (b) Notice of a Board meeting is taken to be given at the relevant time set out in rule 5.10 and rule 6.10(a) applies equally to a notice of Board meeting.
- (c) The Board shall meet at least eight (8) times every Association Year.

6.11 Special Meetings of the Board

The Chairperson may convene a Special Meeting of the Board and fix the date and place of such meeting.

6.12 Quorum at Meetings of the Board

Four (4) Board Members shall form a quorum at any meeting or special meeting of the Board.

6.13 Procedure at Board Meetings

The procedure as to election of the Executive and appointment of Selected Board Members, Chairpersonship, Chairperson's powers, voting, and minute provisions applicable to a General Meeting shall apply to meetings of the Board with such changes as may be necessary.

7. MANAGEMENT OF THE ASSOCIATION

7.1 Association Managed by Board

The Board shall manage and control all of the business of the Association except that which shall in accordance with the Constitution be dealt with by General Meetings.

7.2 Executive Director

- (a) The Board shall appoint an Executive Director who is accountable to the Board.

- (b) The Executive Director has the general power to make decisions on all matters relating to the operational management, organisation and administration of the Association in accordance with the Act, objectives and Constitution, and as authorised by the Board from time to time.
- (c) Without limiting the general power of the Executive Director, the functions and responsibilities of the Executive Director includes the following:
 - (i) to ensure that the operational organisation and activities of the Association are in accordance with the mission, objectives and interests of the Association;
 - (ii) to manage staff and determine work priorities;
 - (iii) to monitor and manage finances within the parameters set by the Board;
 - (iv) to assist the Board as required by the Board;
 - (v) to assist the Treasurer in the preparation of financial statements as required by the Treasurer; and
 - (vi) to assist the Auditor as required by the Auditor.

7.3 Powers of the Board

The Board may exercise all or any of the powers exercisable under the Constitution by the Association.

7.4 Regulations

The Board may from time to time make and rescind, alter, modify or add to regulations in respect of the conduct of the whole or any part of the objects and activities of the Association and in respect to the conduct of the Members.

7.5 Regulations to be Constitutional

All regulations made under the preceding clause shall be consistent with the provisions of this Constitution.

7.6 Appointment of Committee

The Board may set up and constitute committees, or other bodies under such titles or styles as the Board sees fit, consisting of such Board Members, Association Members or others as the Board sees fit, for the purpose of carrying out any function of the Board.

7.7 Delegation of Functions

The Board may delegate in whole or in part any powers or specialised, specific and/or short term functions of the Board to any committee or other body constituted by the Board for that purpose under the preceding clause.

7.8 Property

Any real or personal property acquired by the Association shall be held and acquired by the Association in the name of the Association.

7.9 Execution of Documents

Common seal

- (a) The Association shall have a common seal on which its corporate name shall appear in legible characters.
- (b) The common seal of the Association shall not be used without the express authority of the Board and every use of that common seal shall be recorded in the minute book referred to in sub-clause 5.3(a).
- (c) The affixing of the common seal of the Association shall be witnessed by any two (2) of the Chairperson, the Secretary and the Treasurer.
- (d) The common seal of the Association shall be kept in the custody of the Secretary or of such other person as the Board from time to time decides.

Execution of documents without common seal

- (e) The Association may execute documents without using a seal if the document or documents are signed by any two (2) of the Chairperson, the Secretary and the Treasurer.

7.10 Accounts

The Board shall cause all records to be kept and, at least once after the completion of each Association Year in respect of that Association Year cause accounting reports to be made, or several separate accounts to be made of all the property, financial transactions and affairs of the Association in such a manner as the Board thinks fit but so that the same shall be capable of being audited in such manner as the Auditor referred to in clause 8 hereof may from time to time recommend.

7.11 Annual Accounts

Until otherwise decided by the Board, such accounting reports shall include a statement of all receipts and expenditure during each Association Year and a statement of all of the property and liabilities of the Association at the end of that Association Year with such reconciliation as may be necessary both of which shall be submitted to the Annual General Meeting for approval.

8. APPOINTMENT OF AUDITOR

8.1 Auditor

The Board by resolution or the Members by resolution passed at a Special General Meeting may as necessary, appoint an Auditor of such recognised standing as the Association shall think fit for such period, and on such terms as the Association shall think fit.

8.2 Audit

The Board shall submit the statements referred to in sub-clauses 7.10 and 7.11 hereof to the Auditor of the Association to be audited once in each Association Year prior to

the Annual General Meeting and shall attach the report of the Auditor to the Accounts when tabling the same at the Annual General Meeting.

8.3 Eligibility for Appointment as Auditor

Any Member who is a Board Member shall not be eligible for appointment as Auditor.

8.4 Removal of Auditor

The Auditor appointed to act as such pursuant to this clause may be removed from office during his or her term of office by a resolution of the Board passed by not less than two-thirds of the Board Members, present and who shall vote at the Board Meeting convened for that purpose.

**THE COMMON SEAL of THE PERFORMING
ARTS CENTRE SOCIETY (INCORPORATED.)**

was hereunto affixed by authority of the
Members in the presence of:

Chairperson

Secretary