



**CONSTITUTION OF THE NATIONAL FOLK FESTIVAL LIMITED  
(ACN 058 761 274)**

# **CONSTITUTION**

**REVISED AND EFFECTIVE FROM 13 OCTOBER 2015**

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**PO Box 179, Mitchell ACT 2911**

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## **1. PREAMBLE**

The first Australian National Folk Festival was held in Melbourne, Victoria on 11 and 12 February 1967.

It was organised by a committee comprised of members of the Victorian Folk Music Club, Monash Traditional Music Society and the Burwood Teachers Folk Club along with the performers Martyn Wyndham-Read and Glen Tomasetti.

The second National Folk Festival was also held in Melbourne in 1968.

In 1969 the Festival was relocated to another state. For the next twenty years the Festival was held in a different state each year, with a new committee managing the organisation of the event. The Festival criss-crossed the country bringing folk music and folk life to many people.

By the late 1980s this style of event was becoming very difficult to manage for the organising folk federations in the respective states, as it was growing in popularity and complexity. After the Festival in Canberra in 1992, the Australian Folk Trust took over the Festival's organisation and made provision for it to take place in Canberra each Easter with a stable management team.

The following year the Festival began at its current home at Exhibition Park in Canberra (EPIC). It was decided that the Festival would feature a different state each year to reflect the touring tradition of the event.

In November 1992, the Australian Folk Trust Trustees passed control and management of the Festival to the National Folk Festival Limited. The original subscribers to the original Memorandum of Association of the Company were:

- (a) Seamus Gill;
- (b) Graham McDonald;
- (c) Colin McJannett;
- (d) Keith McKenry; and
- (e) Philip Wilson.

Every year since 1992, the National Folk Festival has been held at EPIC in Canberra at Easter. The Festival has prospered with the enthusiastic support of volunteers, performers and the wider folk community.

## **2. PRELIMINARY**

### **2.1 Company Limited by Guarantee**

The National Folk Festival Limited is a Company limited by guarantee and the liability of Members is limited as provided in this document.

### **2.2 Purpose of the Company**

The purpose of the Company is to promote, organise and conduct annually the National Folk Festival in Canberra in the Australian Capital Territory, and related activities.

### **2.3 Objectives for Holding the National Folk Festival**

- 2.3.1 The objectives for holding the National Folk Festival include:
- (a) promoting, nurturing and preserving folk culture and folk life as a vital element in Australian life;
  - (b) promoting the benefits of folk culture and folk life as a medium for education; and
  - (c) encouraging enjoyment and development of all aspects of traditional and contemporary folk culture and folk life including music, song, dance, craft, lore, verse, customs, beliefs, life styles, speech and games.

## **2.4 Activities**

In conducting and organising the National Folk Festival, the Company may undertake any activities it deems relevant to the objectives.

## **2.5 Application of Income and Property**

- 2.5.1 Subject to rules 2.5 and 8.1, the income and property of the Company, whencesoever derived, shall be applied solely towards the promotion of the objects of the Company.
- 2.5.2 No part of the Company's income may be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise, to the Members of the Company.
- 2.5.3 Nothing in the above prevents:
- (a) the payment in good faith:
    - (i) of remuneration to any of the Company's employees or to any other person in return for any services actually provided to the Company; or
    - (ii) for goods supplied to the Company in the ordinary course of business; or
  - (b) the Company
    - (i) repaying money borrowed from any Member of the Company; or
    - (ii) paying interest on money borrowed from any Member of the Company; or
    - (iii) reimbursing reasonable out-of-pocket expenses to any Director of the Company; or
    - (iv) paying reasonable and proper rent for premises demised or let by any Member of the Company
- 2.5.4 The income and property of the Company will be applied solely in and about the places within the Commonwealth of Australia and in such manner as may be approved by the Board from time to time. This provision does not prevent the income and property of the Company being applied outside the Commonwealth of Australia if such application is:
- (a) made with the knowledge of the Board; and
  - (b) in good faith; and



- (i) in return for goods supplied to the Company in the ordinary course of business; or
- (ii) repaying money borrowed from any Member of the Company; or
- (iii) paying interest on money borrowed from any Member of the Company; or
- (iv) reimbursing out-of-pocket expenses to any Director of the Company; or
- (v) paying reasonable and proper rent for premises demised or let by any Member of the Company.

## **2.6 Replaceable Rules**

The replaceable rules referred to in section 141 of the Act do not apply to the Company and are replaced by the rules set out in this document which shall be the Company Constitution.

## **2.7 Definitions**

The following definitions apply in this document:

- (a) “Act” means the Corporations Act 2001 (Commonwealth), as amended from time to time;
- (b) “AGM” means Annual General Meeting;
- (c) “Board” means the Board of Directors of the Company serving from time to time;
- (d) “By-laws” means regulations made by the Board from time to time for the administration and management of the Company’s affairs;
- (e) “Company” means the Company incorporated as National Folk Festival Limited ACN 058 761 274 and licensed under section 151 of the Act to omit the word “Limited” from its name;
- (f) “Constitution” means this Constitution and all supplementary substituted or amending Constitutions for the time being in force;
- (g) “Directors” means the Directors for the time being of the Company that exercise all the powers of the Company;
- (h) “EGM” means Extraordinary General Meeting;
- (i) “Executive” means the Officers of the Company;
- (j) “Guarantee” means the sum, not exceeding \$10.00, which each Member contributes on applying to become a Member of the Company;
- (k) “Managing Director” means any person appointed by the Board to perform the executive duties of the Company;
- (l) “Member” means a person who is a Member of the Company;
- (m) “Memorandum” means the Memorandum and Articles of Association of the National Folk Festival Limited as in force immediately prior to the commencement of the Constitution;
- (n) “Officers” as defined in the relevant provision;

- (o) "Person" includes a natural person and a company;
- (p) "Register" means any of the Registers kept in accordance with the Act;
- (q) "Register of Cultural Organisations" means the list of registered National Cultural Organisations established in 1991 by the Australian Government whereby cultural organisations on the Register can seek tax deductible donations from the public and corporate sectors and financial support from philanthropic trusts and foundations, and by which the registered organisation is required to maintain a Public Fund and appoint Public Officers to dispense its funds accordingly;
- (r) "Seal" means the common seal of the Company;
- (s) "Secretary" means any person appointed to perform the duties of Secretary of the Company; and
- (t) "Special Resolution" means a resolution of which notice has been given as required by the Act and that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

## **2.8 Interpretation of this Document**

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.

- (i) A reference to something being written or in writing includes that thing being represented or reproduced in any mode in a visible form.
- (j) A word (other than a word defined in rule 1.6) which is defined by the Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Act.
- (k) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

## **2.9 Repeal, Commencement and Savings**

- 2.9.1 This Constitution repeals the Memorandum.
- 2.9.2 This Constitution shall commence at Midnight on the **18<sup>th</sup> Day of November 2010**.
- 2.9.3 Except as otherwise provided<sup>1</sup>, nothing in this Constitution shall affect the validity of any acts done by or on behalf the Company under the Memorandum as in force immediately prior to the commencement of this Constitution.

## **3. MEMBERSHIP**

### **3.1 Register**

The Company shall keep a Register of Members in accordance with the Act.

### **3.2 Rights and Privileges of Members**

- 3.2.1 All Members:
    - (a) are entitled to vote at any General Meeting of the Company;
    - (b) may nominate any other person for membership of the Company; and
    - (c) are eligible for election to the Board.
  - 3.2.2 No Member:
    - (a) may represent themselves to be an employee, agent or representative of the Company unless expressly authorised by the Company to do so;
    - (b) shall conduct themselves in a manner that is in breach of this Constitution, any applicable Code of Conduct approved by the Board from time to time or otherwise in a manner that could bring the Company into disrepute.
  - 3.2.3 The rights and privileges attaching to membership may not be transferred.
- ### **3.3 Becoming a Member of the Company**
- 3.3.1 The process of membership to the Company is initiated by a person by submitting to the Secretary, on invitation by the Board, a written application for membership in the form prescribed in this Constitution.
  - 3.3.2 The application must be supported by two current Members of the Company.

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<sup>1</sup> See provisions relating to appointment of the Chair of the Finance and Audit Committee and the Secretary.

- 3.3.3 The application must be accompanied by a signed declaration, in the form prescribed by this Constitution, that the applicant will abide by the Constitution of the Company.

### **3.4 Admission to Membership of the Company**

- 3.4.1 The Secretary must submit to the Board all applications for membership received at the next Board Meeting held after the receipt of any application for membership.
- 3.4.2 The Board must make a decision whether to accept or reject each application for membership within the next two (2) Board Meetings.
- 3.4.3 If the Board decides to approve an application for membership, the Secretary will enter the applicant's name in the Register of Members and from that date of entry the applicant becomes a Member of the Company. The Secretary must notify the applicant in writing within ten (10) business days after the decision was taken that the applicant has been approved for membership of the Company.
- 3.4.4 Once admitted to membership a person remains a Member of the Company for life unless that membership ceases in accordance with this Constitution.
- 3.4.5 If the Board decides to reject an application for membership, the Secretary must notify the applicant in writing of the decision within ten (10) business days after the decision was taken, but need not give reasons for the decision.

### **3.5 Number of Members**

- 3.5.1 The number of voting Members with which the Company proposes to be registered is unlimited.

### **3.6 Limited Liability of Members**

- 3.6.1 The liability of the Members is limited.
- 3.6.2 In the event the Company is wound up each Member undertakes to contribute to the assets of the Company up to an amount not exceeding Ten Dollars (\$10.00) for payment of the debts and liabilities of the Company, including the costs of the winding up, and for the adjustments of the rights of contributories among themselves. This undertaking continues for one (1) year after a person ceases to be a Member.

### **3.7 Cessation of Membership**

- 3.7.1 A Member's membership of the Company ceases:
- (a) if they resign membership by giving notice in writing addressed to the Secretary of the Company and the resignation is effective from the date of receipt of the notice by the Secretary; or
  - (b) if the Member is expelled from the Company in accordance with this Constitution; or
  - (c) if the Member is by operation of law disqualified from Company membership.

### **3.8 Sanctioning a Member**

- 3.8.1 If in the opinion of the Board a Member has breached a provision of the Constitution, or has acted in a manner that may be prejudicial to the interests of the Company, or has otherwise engaged in conduct that the Board considers improper, or would otherwise bring the Festival into disrepute, the Board:
- (a) must set a date for a meeting of the Board to consider a resolution to censure, suspend or expel the Member (collectively called 'sanction), which must be at least seven (7) days after the date of sending the following notice; and
  - (b) must give written notice to that Member, setting out:
    - (i) the time and place at which the Board meeting is to be held;
    - (ii) what is alleged against that Member, including time(s), date(s), place(s) and details of the alleged conduct;
    - (iii) details of all supporting or corroborating evidence against that Member;
    - (iv) the intended outcome proposed for that Member's sanction;
    - (v) the Member's right to present to the Board, whether orally or in writing, any explanation or defence in relation to the alleged conduct; and
    - (vi) the Member's right to elect to have the resolution for sanction by way of censure or suspension dealt with by the Company at a General Meeting; and
    - (vii) in the event that the proposed resolution is for expulsion from the Company that the resolution must be dealt with by the Company at a General Meeting.
- 3.8.2 If a Member elects to exercise the right to present the Board with an explanation or defence, that Member:
- (a) must, unless they have a reasonable excuse, communicate that election to the Board in writing no later than twenty-four (24) hours prior to the time set down for the Meeting of the Board to consider the matter; and
  - (b) may submit a written explanation or defence to the Board at any time prior to the time of commencement of the Meeting; and
  - (c) may attend the Meeting and submit an oral explanation or defence to the Board, provided that:
    - (i) any such oral explanation or defence is only for the purpose of speaking to any written explanation or defence previously submitted;
    - (ii) or to clarify any queries that the Board may have in relation to that explanation or defence; and
    - (iii) the Member does not attend and enlarge upon that defence (unless it is to answer allegations not previously put) without the permission of the Board, such permission not being unreasonably withheld.
- 3.8.3 In the event of a resolution for expulsion of a Member being dealt with by the Company at a General Meeting, that Member:
- (a) may submit a written explanation or defence to the Company at any

time prior to the time of commencement of the Meeting; and

- (b) may attend the Meeting and submit an oral explanation or defence to the Board, provided that:
  - (i) any such oral explanation or defence is only for the purpose of speaking to any written explanation or defence previously submitted;
  - (ii) or to clarify any queries that the Company may have in relation to that explanation or defence; and
  - (iii) the Member does not attend and enlarge upon that defence (unless it is to answer allegations not previously put) without the permission of the Company, such permission not being unreasonably withheld.

### **3.9 Procedure for the Sanctioning of Members**

- 3.9.1 If a Member does not elect to have the resolution for their sanction dealt with by the Company at a General Meeting, the Board may, after hearing any submissions from that Member, determine the applicable sanction.
- 3.9.2 If a Member elects to have the resolution for their sanction, being censure or suspension dealt with by the Company, or where the resolution for expulsion must be dealt with by the Company at a General Meeting, the Board will convene a General Meeting of the Company to be held no earlier than twenty-eight (28) days after the date of the notice sent to Members advising them of the time and place of the Meeting.
- 3.9.3 At that Meeting, if the resolution to sanction is passed by a two-thirds majority of those Members entitled to vote at the Meeting (including those present and proxies), the Company may, after hearing any submissions from that Member, sanction that Member in accordance with the resolution, and, in the case of expulsion remove that Member's name from the Register.

### **3.10 Effect of Expulsion**

A Member expelled from the Company does not have any claim on the Company, its funds or property but any Member expelled will be liable in the event of the winding up of the Company for the Guarantee.

## **4. BOARD OF DIRECTORS and OFFICE BEARERS**

### **4.1 Number of Directors**

- 4.1.1 There shall be no less than five (5) and no more than eleven (11) Members of the Board of Directors, including the Managing Director.
- 4.1.2 The Company may from time to time by ordinary resolution passed at a General Meeting increase or reduce the number of Directors of the Company.

### **4.2 Office Bearers and Executive**

- 4.2.1 The Board of Directors shall include Office Bearers who shall be the President, Vice President, Secretary, Chair of the Finance and Audit Committee and Managing Director.
- 4.2.2 The Office Bearers shall constitute the Executive of the Board.
- 4.2.3 The role of the Executive shall be to support the functions of the Board and

the Company.

- 4.2.4 No decision of the Executive is binding on the Board or Company unless express authorisation has been granted by the Board at a Board Meeting in advance.

### **4.3 Eligibility**

- 4.3.1 Only Members of the Company are eligible for election or appointment to the Board as a Director or Office Bearer.
- 4.3.2 Neither the Auditor of the Company nor any partner or employee of the Auditor is eligible to be a Director.
- 4.3.3 Notwithstanding rule 4.3.1, the Managing Director shall, for the term of their employment, be an ex-officio Member of the Board of Directors.

### **4.4 Election as an Office Bearer or Board Director**

- 4.4.1 Except as may otherwise be provided in this Constitution<sup>2</sup>, the election of Office Bearers other than the Secretary<sup>3</sup>, Chair of the Finance and Audit Committee and the Managing Director, and Board Directors shall take place in the following manner:

- (a) any two (2) Members of the Company may nominate any other Member of the Company to serve as a Director of the Company;
- (b) the nomination must be:
  - (i) in writing;
  - (ii) in the form prescribed in Schedule 2 or as close to that form as circumstances permit;
  - (iii) signed by the Members putting forward the nomination;
  - (iv) signed by the Member nominated to serve as a Director of the Company; and
  - (v) lodged with the Company Secretary at least seven (7) days prior to the AGM at which the election is to take place;
- (c) a list of candidates' names, with the proposers' and seconders' names, will be posted in a conspicuous place at the registered office for at least seven (7) days preceding the AGM at which the election is to take place;
- (d) each Member present in person or by proxy at the AGM will be entitled to vote in accordance with the procedures in Schedule 3;
- (e) if there is not a sufficient number of candidates nominated for any position for which an election is being conducted at an AGM, any two (2) Members entitled to vote at the Meeting may nominate any other Member for the position provided that the nominated Member consents to serve as a Director of the Company; and
- (f) if any positions remained unfilled at the conclusion of an election held at an AGM, the Board may appoint Directors to fill the remaining

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<sup>2</sup> See footnote 1, above.

<sup>3</sup> The Secretary is appointed by the Board in accordance with rule 16. The Chair of the Finance and Audit Committee is appointed under rule 6.5.

vacancy or vacancies in accordance with the casual vacancy provisions of rule 4.6.

#### **4.5 Term of Office**

- 4.5.1 An Office Bearer/Director elected at an AGM shall, subject to this Constitution, serve a term that expires at the AGM following their election.
- 4.5.2 Where a person fills a casual vacancy in accordance with rule 4.6, subject to this Constitution, that person will serve a term that expires at the next AGM following their appointment.
- 4.5.3 A Director or Office Bearer whose term expires under rules 4.5.1 or 4.5.2 is eligible for re-election as a Director.

#### **4.6 Filling of a Casual Vacancy by the Board**

- 4.6.1 Subject to the number of Directors for the time being fixed under rule 4.1 not being exceeded, the Board may either appoint a Member to be a Director or a person to be a Director, subject to their becoming a Member, at any time when a casual vacancy has occurred in the Board.

#### **4.7 Cessation of Director's Appointment**

A person automatically ceases to be a Director if the person:

- (a) resigns their office by notice in writing to the Company Secretary, resignation to take effect upon receipt of notice;
- (b) becomes bankrupt or makes an arrangement of composition with his creditors generally;
- (c) is not permitted by the Act (or an order made under the Act) to be a director or officer of a company;
- (d) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (e) has their appointment cancelled in accordance with this Constitution;
- (f) is expelled from the Company; or
- (g) fails to attend Board meetings for a continuous period of three (3) months without leave of absence from the Board.

#### **4.8 Removal from Office**

- 4.8.1 Irrespective of the method of election or appointment to the Board the Company may at a General Meeting by way of notice of motion pass a resolution to cancel the appointment of a Director of the Board.
- 4.8.2 The motion to cancel the appointment of a Director of the Board must be passed by a majority of voting Members present at the Meeting.
- 4.8.3 The power to remove a Director under this rule is in addition to section 203D of the Act.
- 4.8.4 A Director subject to a motion to cancel their appointment is not eligible for re-appointment for a period of three (3) years with year one commencing on 1 July of the year after the resolution was been passed.



#### **4.9 Too Few Directors**

- 4.9.1 If the number of Directors is reduced below the minimum of (five) 5 the remaining Directors may act as the Board:
- (a) to appoint Directors up to that minimum number,
  - (b) to convene a General Meeting of the Company for the purpose, amongst other things to seek nominations and election to the Board.

### **5. POWERS and FUNCTIONS OF THE BOARD**

#### **5.1 Powers and Functions Generally**

- 5.1.1 Except as otherwise required by the Act, any other applicable law or this document, the Board:
- (a) has power to manage the business of the Company; and
  - (b) may exercise every right, power or capacity of the Company except those required to be exercised by the Company in General Meeting.

#### **5.2 Exercise of Powers**

- 5.2.1 A power of the Board can be exercised only:
- (a) by resolution passed at a Meeting of the Board; or
  - (b) by a Committee or the Executive in accordance with a delegation of the power as approved in advance by the Board.

#### **5.3 Borrowing Money**

The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt, liability, or obligation of the Company.

#### **5.4 Executing Negotiable Instruments**

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two (2) Members of the Board Executive or by any other manner that the Board may from time to time determine.

### **6. DELEGATION OF BOARD POWERS**

#### **6.1 Power to Delegate**

- 6.1.1 The Board may by way of resolution delegate any of its powers and/or functions (not being duties imposed on the Board as the Directors of the Company by the Law or the general law) to committees of the Board.
- 6.1.2 Any committee shall consist of at least two (2) Directors and such other persons as the Board considers appropriate.
- 6.1.3 Any committee so formed shall only exercise such functions as are delegated in the motion establishing the committee and in the terms of reference of the committee as approved by the Board at a Board Meeting.

6.1.4 Any committee established under rule 6.1.1 must conform to any directions issued by the Board.

## **6.2 Power to Revoke Delegation**

6.2.1 The Board may revoke a delegation previously made under rule 6.1.1 whether or not the delegation is expressed to be for a specified period.

## **6.3 Terms of Delegation**

6.3.1 A delegation of powers under rule 6.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

6.3.2 A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

## **6.4 Proceedings of Committees.**

6.4.1 Each committee shall elect a Chair and shall have power to co-opt any Member of the Company and all Members of such committees shall have one (1) vote each.

6.4.2 A committee may meet and adjourn as it thinks proper.

6.4.3 Questions arising at any meeting shall be determined by a majority of votes of the committee Members present, and in the case of an equality of votes the Chair shall have a second or casting vote.

6.4.4 Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document, which regulate the meetings and proceedings of the Board.

## **6.5 Finance and Audit Committee**

6.5.1 The Board shall establish a Finance and Audit Committee that will operate as directed by the Board.

6.5.2 The Finance and Audit Committee shall be made up of at least four (4) persons.

6.5.3 At least two (2) Board Directors shall be on the Finance and Audit Committee.

6.5.4 Subject to rule 6.5.5, one of the Board of Director Members shall be the Chair of the Finance and Audit Committee, and shall be approved by the Board.

6.5.5 Unless the Board at its first meeting following the commencement of this Constitution decides otherwise, the person elected to the position of Treasurer under the Memorandum or at the AGM of the Company on 17 November 2010 shall be deemed to have been appointed as Chair of the Finance and Audit Committee under this rule 6.5<sup>4</sup>.

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<sup>4</sup> If a person was not appointed as Treasurer, the appointment can be made in accordance with the rule.

- 6.5.6 The Managing Director may be a Member of the Finance and Audit Committee, but may not Chair the Committee.

## **6.6 Advisory Committees**

- 6.6.1 The Board may also appoint advisory committees consisting of such members as the Board thinks fit.
- 6.6.2 Such committees shall act in an advisory capacity only.
- 6.6.3 Committees shall conform with any directions given by the Board or any by laws that may be imposed by the Board and subject thereto shall have power to co-opt any Members of the Company.
- 6.6.4 All members of such advisory committees shall have one (1) vote each.

## **7. DUTIES and INTERESTS OF DIRECTORS, MEMBERS and OTHERS**

### **7.1 Compliance With Duties Under the Act**

Each Director must comply with sections 180 to 184 of the Act.

### **7.2 Director Not Disqualified From Holding Other Offices etc**

A Director is not disqualified by reason only of being a Director from:

- (a) being a member or creditor of any corporation (including the Company) or partnership other than the Auditor; or
- (b) entering into any agreement with the Company; or
- (c) being a paid employee of the Company.

### **7.3 Disclosure of Pecuniary Interests**

- 7.3.1 A Director must declare as soon as a Meeting commences any matters before the Board in which they have a personal financial interest.
- 7.3.2 A Director must declare as soon as a Meeting commences any matters before the Board in which an organisation or a legal entity with which they have an association or have an interest, financial or otherwise.
- 7.3.3 A Director must declare as soon as a Meeting commences any matters before the Board in which a person with whom they have a personal or business relationship has an interest, financial or otherwise.
- 7.3.4 For the purpose of this rule the payment of attendance fees and expenses at Meetings representing the National Folk Festival is deemed to be a declarable interest.
- 7.3.5 Declarations of interests are to be recorded in the Minutes.

### **7.4 Director Interested in a Matter**

- 7.4.1 Each Director must comply with section 195 in relation to being present, and voting at a Board Meeting that considers a matter in which the Director has a material personal interest.
- 7.4.2 A Director may be counted in a quorum at a Board Meeting that considers a matter in which they have a material personal interest.

- 7.4.3 A Director may not be present at the Meeting for the duration of a matter in which they have declared an interest under rule 7.3.
- 7.4.4 A Director may not vote on a matter in which they have declared an interest under rule 7.3.
- 7.4.5 The failure of a Director to make a declaration of interest does not invalidate a decision of the Board.

## **7.5 Agreements with Third Parties**

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board Meeting that considers or votes on that agreement.

## **7.6 Obligation of Confidentiality**

- 7.6.1 Except where the Board of Directors has provided authorisation, Directors, Members and persons co-opted to committees must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:
- (a) in the course of duties as an Officer of the Company;
  - (b) by the Board or the Company in General Meeting; or
  - (c) by law.

# **8. DIRECTORS' REMUNERATION**

## **8.1 Restrictions on Payments to Directors**

Subject to rule 8.2 and rule 9, the Company must not pay fees or other remuneration to a Director.

## **8.2 Payments to Directors With Board Approval**

With the approval of the Board the Company may pay to a Director:

- (a) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
- (b) reasonable remuneration for any contract of services approved in advance by the Board and rendered by the Director to the Company;
- (c) interest on money lent by the Director to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (d) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business;
- (e) reasonable rent for any premises leased by the Director to the Company; and
- (f) reasonable performance fees occasioned by the performance by the Director as a booked performer at the National Folk Festival.

## **9. INDEMNITY and INSURANCE**

### **9.1 Indemnity**

9.1.1 The Company shall indemnify a person against liability for costs and expenses incurred by that person in her or his capacity as Director, Auditor or agent of the Company, including a Company Member who is acting as such an agent:

- (a) in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application, in relation to any such proceedings, in which the Court grants relief to the person under the law.

9.1.2 The indemnity is subject to the limitation that the person was acting in a diligent and reasonable manner in undertaking duties related to the discharge of the responsibilities for or on behalf of the Company.

9.1.3 Subject to the Act, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

### **9.2 Former Directors/Auditors/Agents etc**

The indemnity under rule 9.1 is a continuing indemnity and applies even the person has ceased the function for the Company that entitled them to indemnity and that person was not acting in that function when the claim was made.

## **10. BOARD MEETINGS**

### **10.1 Convening Board Meetings**

10.1.1 A majority of Directors may, by way of written notice, request a Meeting of the Board.

10.1.2 A Meeting may be constituted either by the Board of Directors in person, by conference call or by any other means, including an e-Meeting approved by the Board.

### **10.2 Meeting to be Convened**

On receipt of a written request under rule 10.1 the Secretary shall within twenty-eight (28) days convene a Meeting of the Board.

### **10.3 Notice of Board Meeting**

10.3.1 Directors are to be provided with reasonable notice of a Meeting that shall be not less than seven (7) days notice of a Board Meeting.

10.3.2 The President may rule that in the event of urgent matters of importance the notice of a Board Meeting may be reduced to a minimum of three (3) days.

10.3.3 Notice of a Meeting may be given orally or written and includes electronic communications.

### **10.4 Procedural Rules**

10.4.1 The Board may formulate by-laws of Procedural Rules or a Code of Meeting Procedures which by which it shall conduct its Meetings.

- 10.4.2 In the absence of such by-laws Meetings shall be conducted with as little formality as is necessary to properly and lawfully discharge the functions of the Board.

### **10.5 Chairing Board Meetings**

- 10.5.1 The President shall Chair at every Meeting of the Board, or if there is no President, or if at any Meeting the Chair is not present within fifteen (15) minutes after the time appointed for holding the Meeting, the Vice President shall be Chair for the Meeting.
- 10.5.2 In the circumstances that neither the President nor the Vice President are present at the Meeting then the Directors present may choose one of their number to be Chair of the Meeting.

### **10.6 Quorum**

- 10.6.1 The quorum for a Board Meeting is one half plus one (disregarding any remainder) of the Directors.
- 10.6.2 A quorum must be present for the whole Meeting.
- 10.6.3 A Director is considered to be part of the quorum and present at a Meeting if they have made a declaration of interest in accordance with rule 7.4.3 and had to leave the meeting area.
- 10.6.4 A Director is considered as present at a Meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending.
- 10.6.5 Where a Meeting is inquorate the Directors present may continue to meet but any resolutions or actions are advisory only and are not binding on the Board or Company.

### **10.7 Majority Decisions**

- 10.7.1 Decisions of the Board shall be determined by a majority of votes cast and a determination by a majority of the Members of the Board shall for all purposes be deemed a determination of the Board.
- 10.7.2 Abstentions shall be recorded as a vote against the motion.
- 10.7.3 In the case of an equality of votes, subject to rule 10.7.4 the motion is not carried.
- 10.7.4 In the case of an equality of votes, notwithstanding rule 10.7.3 the Chair of the Meeting has the discretion to exercise a casting vote.
- 10.7.5 The Chair has the discretion to cast the vote for or against the motion.
- 10.7.6 The exercise of a casting vote is to be recorded as such in the Minutes.

### **10.8 Written Resolution**

- 10.8.1 The Board may by a majority agree to deal with a matter by way of written resolution. A written resolution may include email providing that:
- (a) each Board Member is sent an email detailing the matter and the time by which Directors must vote;
  - (b) a majority of Directors entitled to vote on the matter notifies all other Directors by email whether he or she votes in the affirmative in respect of that matter and does so without amendment or condition;

- (c) a record of the resolution is kept; and
  - (d) the resolution is noted at the next Board Meeting along with the proposer and seconder.
- 10.8.2 Subject to all the Directors entitled to receive notice of a Board Meeting and rule 10.8.1 being first satisfied, a vote on the resolution can be by way of a signed document.
- 10.8.3 The document must set out the notice of motion and contain provision for a signed statement that the Director is in favour of the resolution set out in the document.
- 10.8.4 A written Board resolution is passed on a majority basis and
  - (a) when a majority of Directors have signed or indicated in writing that they are in favour;
  - (b) when the last Director signs or indicates in writing; and
  - (c) the Chair confirms that (a) and (b) above have been satisfied.
- 10.8.5 A written resolution may consist of several documents in like form, each signed by one (1) or more Members of the Board.

## **10.9 Valid Proceedings**

- 10.9.1 Any actions done by any Meeting of the Board or of a committee or by any person acting as a Member of the Board are not invalidated by a defect in the appointment of any such Member of the Board or person acting as aforesaid.
- 10.9.2 Any actions done by any Meeting of the Board or of a committee or by any person acting as a Member of the Board is not invalidated by the fact that at the time a Director was disqualified.

## **11. MEETINGS OF MEMBERS**

### **11.1 Annual General Meeting**

- 11.1.1 An Annual General Meeting of the Company shall be held once every financial year within five (5) months after 30 June each year.
- 11.1.2 An Annual General Meeting of the Company shall be held in accordance with the provisions of the Corporations Act.
- 11.1.3 The business of the AGM shall include the following, even if not referred to in the notice of the meeting:
  - (a) a report to Members on the conduct of the Company;
  - (b) the consideration of the annual financial, the Board's and the Auditor's reports;
  - (c) the election of Directors and Office Bearers;
  - (d) the appointment of the Auditor; and
  - (e) the fixing of the Auditor's remuneration.

### **11.2 Extraordinary General Meeting**

- 11.2.1 All General Meetings, other than the Annual General Meeting, shall be called Extraordinary General Meetings (EGM).

11.2.2 An EGM may be called:

- (a) by a majority decision of the Board; or
- (b) at the request of not less than four (4) Members.

11.2.3 Where an EGM is called pursuant to rule 11.2.2(b) the request must:

- (a) be in writing;
- (b) be signed by each Member making the request;
- (c) state any resolutions proposed at the Meeting; and
- (d) be given to Members in accordance with the notice provisions of the Constitution.

### **11.3 Convening an EGM**

An EGM:

- (a) may be convened at any time by the Board when called by majority decision; or
- (b) where an EGM is called by Members under rule 11.2.2 it must be convened by the Board when required by section 249D or 250N or by order made under section 249G.

### **11.4 Notice of Meeting<sup>5</sup>**

11.4.1 Notice of a Meeting of Members shall be given at least twenty-one (21) days before the Meeting.

11.4.2 For the purpose of notice – the day of issue and the day of the Meeting are not to be counted as days of notice.

11.4.3 The notice must specify the following:

- (a) time, location and day of the Meeting;
- (b) in the case of an Extraordinary General Meeting, the general nature of that business shall be indicated; and
- (c) notice is to be given to such Members as are entitled to receive such notices from the Company.

11.4.4 The notice of Meeting must comply with section 249L of the Act and may be given in any manner permitted by section 249J(3).

### **11.5 Short Notice**

Subject to sections 249H(3) and (4) of the Act:

- (a) if the Company has elected to convene a Meeting of Members as the Annual General Meeting, if all the Members entitled to attend and vote agree; or
- (b) otherwise, if Members who together have power to cast at least 95% of the votes that may be cast at the Meeting agree,

a resolution may be proposed and passed at a Meeting of which less than twenty-one (21) days' notice has been given.

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<sup>5</sup> Where the terms AGM and EGM are not used the rule applies to both.



## **11.6 Postponement or Cancellation**

Subject to sections 249D(5) and 250N of the Act, the Board may:

- (a) postpone a Meeting of Members;
- (b) cancel a Meeting of Members; or
- (c) change the place for a General Meeting,

by written notice given individually to each person entitled to be given notice of the Meeting.

## **11.7 Notice for Reconvened Meeting**

- 11.7.1 When a Meeting is adjourned for thirty (30) days or less notice of the adjourned Meeting is considered to have been given.
- 11.7.2 When a Meeting is adjourned for more than thirty (30) days or more notice shall be given as in the case of an original Meeting.
- 11.7.3 In the case of an adjourned Meeting it shall not be necessary to give any additional notice of the business to be transacted at an adjourned Meeting.
- 11.7.4 Additional business may be notified to an adjourned Meeting subject to the following:-
  - (a) written notice of the additional business has been given to all persons entitled to attend the adjourned Meeting;
  - (b) the written notice must be given at least (ten) 10 days before the reconvening of the adjourned Meeting.

## **11.8 The Accidental:**

- (a) omission to give notice to; or
- (b) non-receipt of notice by, any of those entitled to it,

does not invalidate any resolution passed at a Meeting of Members.

## **12. PROCEEDINGS AT MEETINGS OF MEMBERS**

### **12.1 Member Present at Meeting**

If a Member has appointed a proxy or attorney to act at a Meeting of Members, that Member is taken to be present at a Meeting at which the proxy, attorney or representative is present.

### **12.2 Quorum**

- 12.2.1 The quorum for a Meeting of Members is twelve (12) Members.
- 12.2.2 Each individual present may only be counted once toward a quorum.
- 12.2.3 If a Member has appointed more than one (1) proxy or representative only one (1) of them may be counted towards a quorum.
- 12.2.4 No business shall be transacted at any General Meeting unless a quorum of Members is present at the time when the Meeting proceeds to business.

### **12.3 Quorum Not Present**

If after thirty (30) minutes of the specified time for commencing the Meeting in the notice time for which a Meeting of Members is called:

- (a) if called as a result of a request of Members under rule 11.2.2 (section 249D), the Meeting is dissolved; and
- (b) in any other case:
  - (i) the Meeting is adjourned to the day, time and place that the Board decides and notifies to Members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
  - (ii) if a quorum is not present at the reconvened Meeting within thirty (30) minutes from the time appointed for the reconvened Meeting, the Meeting is dissolved.

### **12.4 Chairing Meetings of Members**

The President shall preside at every General Meeting of the Company. If:

- (a) there is no President; or
- (b) the President is not present within fifteen (15) minutes after the time appointed for the holding of the Meeting or is unwilling to Chair the Meeting,

the Vice President shall be the Chair for that Meeting or, if the Vice President is not present or is unwilling to act then the Members present shall elect a Member present to Chair the Meeting.

### **12.5 Attendance at General Meetings**

- 12.5.1 Every Member has the right to attend all Meetings of Members.
- 12.5.2 Every Director has the right to attend and speak at all Meetings of Members.
- 12.5.3 The Auditor has the right to attend any Meeting of Members and to speak on any part of the business of the Meeting which concerns the Auditor in the capacity of Auditor.

### **12.6 Adjournment**

Subject to rule 10.6 the Chair of a Meeting of Members at which a quorum is present:

- (a) may, with the consent of the Meeting; and
- (b) must, if directed by ordinary resolution of the Meeting,

adjourn the Meeting to another time and place.

### **12.7 Business at Adjourned Meetings**

The only business that may be transacted at a Meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

## **13. PROXIES, ATTORNEYS and REPRESENTATIVES**

### **13.1 Appointment of Proxies**

- 13.1.1 A Member may appoint a proxy to attend and act for the Member at a Meeting of Members.
- 13.1.2 The instrument appointing a proxy shall:
- (a) be in writing, with the Member's name and address;
  - (b) contain the Company name;
  - (c) be signed by the appointer or of his or her proxy, or if signed by the appointer's attorney, contain the authority under which the appointment was signed or a certified copy thereof; and
  - (d) specify the Meeting at which the proxy may attend.
- 13.1.3 A proxy must be a Member of the Company.
- 13.1.4 A Member shall be entitled to instruct his or her proxy to vote in favour of or against any proposed resolutions but unless so instructed the proxy may vote as they consider appropriate.
- 13.1.5 The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
- 13.1.6 An appointment of proxy must be made by written notice to the Company in substantially the form set out at Schedule 1.

### **13.2 Member's Attorney**

A Member may appoint an attorney to act, or to appoint a proxy to act, at a Meeting of Members. If the appointer is an individual, the power of attorney must be signed in the presence of at least one (1) witness.

### **13.3 Deposit of Proxy Forms and Powers of Attorney**

An appointment of a proxy or an attorney is not effective for a particular Meeting of Members unless:

- (a) in the case of a proxy, the proxy form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it, is received by the Company at its registered office, or at such other place within the State or Territory as specified for that purpose in the notice convening the Meeting, not less than forty-eight (48) hours before the time for holding the Meeting or adjourned Meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than forty-eight (48) hours before the time appointed for the taking of the poll and in default the instrument of proxy shall not be treated as valid.

### **13.4 Member of Unsound Mind**

A Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his or her trustee or by such other person who properly has the management of his or her estate, and any such trustee or other person may vote by proxy or attorney.

### **13.5 Standing Appointments**

A Member may appoint a proxy, attorney or representative to act at a particular Meeting of Members or make a standing appointment and may revoke any appointment.

### **13.6 Suspension of Proxy or Attorney's Powers if Member Present**

A proxy or attorney has no power to act for a Member at a Meeting at which the Member is present:

- (a) in the case of an individual, in person; or
- (b) in the case of a body corporate, by representative.

A proxy has no power to act for a Member at a Meeting at which the Member is present by attorney.

### **13.7 Priority of Conflicting Appointments of Attorney or Representative**

If more than one (1) attorney or representative appointed by a Member is present at a Meeting of Members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular Meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule 13.9(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

### **13.8 More than One (1) Current Proxy Appointments**

An appointment of proxy by a Member is revoked (or, in the case of a standing appointment, suspended for that particular Meeting) if the Company receives a further appointment in writing of a proxy from that Member which would result in there being more than one (1) proxy of that Member entitled to act at a Meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

### **13.9 Continuing Authority**

An act done at a Meeting of Members by a proxy, attorney or representative is valid even if, before the act is done, the appointing Member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up; or
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party, □

unless the Company has received written notice of the matter before the start or resumption of the Meeting at which the vote is cast.

## **14. ENTITLEMENT TO VOTE**

### **14.1 Number of Votes**

At a Meeting of the Company:

- (a) a Member may vote in person or by proxy or by attorney and on a show of hands each person present who is a Member or representative of a Member shall have one (1) vote;
- (b) on a poll every Member in person or by proxy or by attorney or other duly authorised representative shall have one (1) vote;
- (c) a Meeting may decide a matter on the voices or on a show of hands;
- (d) two (2) or more Members may move a procedural motion that a poll be taken;
- (e) if the motion is successful on the majority vote a poll must be conducted;
- (f) two (2) or more Members may move a procedural motion that a poll be conducted on a Division; and
- (g) if a motion referred to in paragraph (f) is successful then a Member's vote shall be recorded against that Member's name.

### **14.2 Casting Vote of Chair**

- 14.2.1 In the case of an equality of votes, the Chair of a Meeting at which a poll is requested shall be entitled to a casting vote.
- 14.2.2 The Chair has the discretion to cast the vote for or against the motion or not to exercise the discretion.
- 14.2.3 The exercise of a casting vote is to be recorded as such in the Minutes.

### **14.3 Voting Restrictions**

- 14.3.1 If:
  - (a) the Act requires that some Members are not to vote on a resolution, or that votes cast by some Members be disregarded, in order for the resolution to have an intended effect; and
  - (b) the notice of the Meeting at which the resolution is proposed states that fact,those Members have no right to vote on that resolution and the Company must not count any votes purported to be cast by those Members.
- 14.3.2 If a proxy purports to vote in a way or in circumstances that contravene section 250A(4), on a show of hands the vote is invalid and the Company must not count it and on a poll rule 15.3 applies.

## **15. HOW VOTING IS CARRIED OUT**

### **15.1 Method of Voting**

- 15.1.1 A resolution put to the vote at a Meeting of Members shall be decided on a show of hands unless a poll is demanded under rule 15.2 either before or on declaration of the result of the vote on a show of hands.

- 15.1.2 Unless a poll is requested and supported by the Meeting the Chair's declaration of a decision on a show of hands is final without proof of the number or proportion of the votes recorded in favour of or against the resolution unless two (2) or more Members move a procedural motion of dissent in the Chair, which may be passed by a simple majority and if the motion is successful the votes cast shall be recorded as if a poll had been conducted under a Division per rule 14.1.

## **15.2 Demand for a Poll**

- 15.2.1 A poll may be demanded on any resolution by either a procedural motion being successfully passed in the majority to take a poll, the Chair ruling in his or her absolute discretion that it is appropriate.
- 15.2.2 The demand for a poll does not affect the continuation of the Meeting for the transaction of other business.

## **15.3 When and How Polls Must be Taken**

- 15.3.1 If the resolution is for the adjournment of the Meeting or the election of a Chair, the poll must be taken immediately and, subject to rule 15.3.3, in the manner that the Chair of the Meeting directs.
- 15.3.2 In all other cases, the poll must be taken at the time and place and, subject to rule 15.3.3 in the manner that the Chair of the Meeting directs.
- 15.3.3 Votes which section 250A(4) requires to be cast in a given way must be treated as cast in that way.
- 15.3.4 A person voting who has the right to cast two (2) or more votes need not cast all those votes and may cast those votes in different ways.
- 15.3.5 The result of the poll is the majority of votes cast.

## **16. SECRETARY**

### **16.1 Appointment of Secretary**

- 16.1.1 Subject to rule 16.1.3 the Board must appoint a person to be the Secretary for the Company, referred to as Secretary.
- 16.1.2 The Secretary may be a Director, other than the President, Vice President, Chair of the Finance and Audit Committee or the Managing Director or Deputy.
- 16.1.3 Unless the Board at its first meeting following the commencement of this Constitution decides otherwise, any person elected to the position of Secretary under the Memorandum or at the AGM of the Company on 17 November 2010 shall be deemed to have been appointed as Secretary under rule 16.1.1.<sup>6</sup>
- 16.1.4 The Secretary may be an employee of the Company.

### **16.2 Terms of Office**

- 16.2.1 Subject to rule 16.3, a Secretary appointed under rule 16.1 shall hold office until the following AGM.

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<sup>6</sup> If no Secretary was elected then as for footnote 4.

16.2.2 The Board may vary any decision previously made by it in respect of a Secretary.

### **16.3 Cessation of Secretary's Appointment**

The person automatically ceases to be a Secretary if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a Secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 16.4.

### **16.4 Removal of Secretary**

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

## **17. APPOINTMENT OF A MANAGING DIRECTOR**

17.1 The Board is responsible for the recruitment and appointment of a Managing Director (MD). The MD may be recruited:

- (a) by any process the Board deems fit; and
- (b) on terms and conditions as may be determined by the Board.□

### **17.2 Admission as Member of the Company**

17.2.1 Where a person is appointed in accordance with rule 17.1 they shall automatically become a Member of the Company and shall be entered on the Register of Members as if rule 3.4.3 applied.

### **17.3 Responsibilities of MD**

17.3.1 The MD is responsible for:

- (a) the efficient and effective operation of the Company's operations;
- (b) ensuring the implementation, without undue delay, of decisions of the Board;
- (c) the day-to-day management of the Festival Office and the Festival on-site at EPIC;
- (d) exercising such of the functions as may be delegated by the Board;
- (e) appointing staff in accordance with an organisation structure and resources approved by the Board;
- (f) directing and dismissing staff; and
- (g) implementing the Board's equal employment opportunity policy and other policies of the Company.

17.3.2 The MD has such other responsibilities or functions as may be conferred or

imposed on him or her by or under this Constitution or any other law or decision of or agreement with the Board.

#### **17.4 Filling of Vacancy in Position of MD**

- 17.4.1 If a vacancy occurs in the position of MD, the Board must as soon as practicable and, either in accordance with this Constitution, appoint a person to the vacant position, or appoint a person to act in the vacant position until a person is recruited.
- 17.4.2 A vacancy occurs in the position of the MD if the MD:
- (a) dies;
  - (b) completes the term of his or her contract and is not re-appointed;
  - (c) resigns from the position;
  - (d) becomes a physically or mentally incapacitated person and is on medical advice from a competent person consider unfit to continue in the position;
  - (e) is sentenced to imprisonment;
  - (f) is removed from the position for breach of or under the terms of the MD's contract; or
  - (g) in the view of the Board has failed to performance at a suitable level after been informed of the Board concerns and given a reasonable opportunity to improve or on-going poor performance with the Company.

### **18. MINUTES**

#### **18.1 Minutes Must be Kept**

- 18.1.1 The Board shall cause Minutes to be made of:
- (a) all appointments of officers and employees;
  - (b) the names of Directors present at each Board Meeting or Committee Meeting;
  - (c) all proceedings and resolutions of Board Meetings (including meetings of a committee to which Board powers are delegated under rule 6);
  - (d) written resolutions passed by Directors without a meeting; and
  - (e) disclosures and notices of Directors' interests.
- 18.1.2 The Minutes are to be kept in accordance with sections 191, 192 and 251A.
- 18.1.3 Minutes shall be signed by the Chair of the Meeting at which the proceedings were held or by the Chair of the next succeeding Meeting.

#### **18.2 Minutes as Evidence**

A Minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary



is proved.

### **18.3 Inspection of Minute Books**

The Company shall allow Members to inspect, and provide copies of, the Minute books for the Meetings of Members in accordance with section 251B.

## **19. COMPANY SEAL**

- 19.1.1 The Company may have a Seal.
- 19.1.2 The Board shall provide for the safe custody of the Seal which shall only be used by the authority of the Board.
- 19.1.3 Every instrument to which the Seal is affixed shall be signed by a Board Director authorised by the Board to sign negotiable instruments and shall be countersigned by the MD or by a second Member of the Board authorised to sign negotiable instruments.

## **20. FINANCIAL REPORTS and AUDIT**

### **20.1 Company Must Keep Financial Records**

- 20.1.1 The Board shall cause proper accounting and other records to be kept.
- 20.1.2 The Board shall distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) accompanied by a copy of the Auditors Report thereon as required by the Act.
- 20.1.3 The Company accounts will comply with the relevant Australian Accounting Standards.
- 20.1.4 The Board must cause the Company to keep written financial records that:
  - (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance;
  - (b) would enable true and fair financial statements to be prepared and audited.
- 20.1.5 The Board shall, subject to reasonable restrictions as to the time and manner, provide such records for the inspection of Members.

### **20.2 Financial Reporting**

The Board must cause the Company to prepare a Financial Report and a Directors' Report that comply with Part 2M.3 and must report to Members in accordance with section 314 no later than the deadline set by section 315.

### **20.3 Audit**

- 20.3.1 The Board must cause the Company's Financial Report for each financial year to be audited and obtain an Auditor's Report which shall be made available to the Members of the Company.
- 20.3.2 Copies of the Auditor's Report for the past financial years are open to inspection upon reasonable notice at the Company's office by any Member or representative Member.
- 20.3.3 The eligibility, appointment, removal, remuneration, rights and duties of the

Auditor are regulated by sections 324 to 331 and 1280 and 1289.

## **20.4 Conclusive Reports**

- 20.4.1 Audited financial reports laid before the Company in General Meetings are conclusive except as regards errors notified to the Company within three (3) months after the relevant General Meeting.
- 20.4.2 If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

## **21. REGISTER OF MEMBERS**

- 21.1.1 The Company must set up and maintain a Register of Members.
- 21.1.2 In accordance with section 169, the Register must contain the following information:
  - (a) the name and address of each Member;
  - (b) the date on which the entry of the Member's name in the Register is made;
  - (c) the name and details of each person who stopped being a Member within the last seven (7) years;
  - (d) the date on which the person stopped being a Member; and
  - (e) an index of Members' names if the Company has more than fifty (50) Members and the Register itself is not kept in a form that operates effectively as an index.

## **22. WINDING UP**

- 22.1 If the Company is wound up:
  - (a) any assets and property owned by the Company must not be paid to Members of the Company;
  - (b) property owned by the Company shall be given or transferred to some other institution or institutions having objects compatible to the objects of the Company;
  - (c) the Company receiving the assets and property must have a constitution that prevents the distribution of its or their income and property among its or their Members and shareholders; and
  - (d) the distribution of the assets and property shall be determined by the majority decision of the Board.

## **23. NOTICES**

### **23.1 Notices by Company**

- 23.1.1 Any notice required by law or by or under this Constitution to be given shall be given as determined by the Board only if there is no determination by sending it by post to the last known or registered address, or (if there is no registered address within the Commonwealth of Australia) to the address, if any, within the Commonwealth of Australia supplied to the Company for the giving of notices.

23.1.2 Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, preparing and posting a letter containing the notice on the day after the date of its posting, and in any other case at the time at which the letting would be delivered in the ordinary course of post.

23.1.3 A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and either:
  - (i) delivered personally;
  - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address;
  - (iii) sent by fax to the fax number (if any) nominated by that person; or
  - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

## **23.2 Overseas Members**

A Member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

## **23.3 When Notice is Given**

23.3.1 A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally or sent by fax or electronic message:
  - (i) by 5 pm (local time in the place of receipt) on a business day - on that day; or
  - (ii) after 5 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day; and
- (b) if it is sent by mail:
  - (i) within Australia – one (1) business day after posting; or
  - (ii) to a place outside Australia – three (3) business days after posting.

23.3.2 A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

## **23.4 Business Days**

For the purposes of rule 23.3.1, a business day is a day that is not Saturday, Sunday or public holiday in the place to which the notice is sent.

## **23.5 Counting Days**

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the

action is to be taken may be counted in reckoning the period.

## **23.6 Notices to "Lost" Members**

23.6.1 If:

- (a) on two (2) or more consecutive occasions a notice served on a Member in accordance with this rule is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a Member is not at the address shown in the Register or notified to the Company under rule 23.6.2,

the Company may give effective notice to that Member by exhibiting the notice at the Company's registered office for at least forty-eight (48) hours.

23.6.2 For the record, rule 23.6.1 ceases to apply if the Member gives the Company notice of a new address.

## **24. CHANGES TO THE CONSTITUTION**

24.1.1 The Company's Constitution may be repealed, altered or amended by resolution of three quarters (75%) of voting Members present in person or by proxy and voting at a General Meeting.

24.1.2 Any motion to repeal, alter or amend the Constitution requires not less than twenty-one (21) days written notice.

24.1.3 The written notice must request at the same time state the details of the proposed changes to the Constitution.

24.1.4 The notice of the proposed changes must be distributed to all Members of the Company.

24.1.5 If it is proposed to consider the changes to the Constitution outside of an Annual General Meeting then the notice must also meet the requirements for an EGM in accordance with rule 11.2.

24.1.6 All additions or amendments to the Constitution must be approved at a General Meeting of Members.

25. SCHEDULE 1 – Proxy Form

PROXY FORM

COMPANY  
LOGO

ABN 96 058 761 274

I, .....  
(Insert MEMBER'S name)

of.....  
(Insert MEMBER'S address)

being a Company Member of the National Folk Festival Limited and entitled to vote at the (Annual or Extraordinary)<sup>7</sup> General Meeting/s on **[insert date here]** and at any adjournment of that meeting/s, hereby appoint the following proxy / proxies (delete as applicable):

Proxy 1:

|          |  |
|----------|--|
| Name:    |  |
| Address: |  |

Proxy 2: (optional)

|          |  |
|----------|--|
| Name:    |  |
| Address: |  |

My proxy is authorised to vote on my behalf: (Tick ✓ only **ONE** of the following:)

At the General Meeting/s (and any adjournments of the meeting/s)

OR

In relation to the following resolution/s and/or nominations

In Favour:

Against:

|       |       |
|-------|-------|
| ..... | ..... |
| ..... | ..... |
| ..... | ..... |

(Insert resolution numbers, brief description or nominees' name/s)

Signature of Member Appointing Proxy:.....

Date:.....

\_\_\_\_\_

<sup>7</sup> Strike out where inapplicable

26. SCHEDULE 2 – Nomination Form

**NOMINATION FORM**

COMPANY  
LOGO

ABN 96 058 761 274

**We,  
Proposer**

Name:   
Address:

**Secunder**

Name:   
Address:

being a Company Members of the National Folk Festival Limited nominate:

Candidate Name:   
Address:

to stand as a candidate for the position of: (select ONE only)

- President
- Vice President
- Director

on the Board of the National Folk Festival

Signed: ..... (Proposer)

Signed: ..... (Secunder)

**CANDIDATE ACCEPTANCE:**

I hereby accept this nomination.

Signed: ..... (Candidate)

Date: ...../...../.....

## 27. SCHEDULE 3 – Election Procedures

### Procedures for Electing the Executive and Directors of the Company

At an AGM, the Executive<sup>8</sup> and Directors of the Company are to be elected in accordance with this schedule.

The Members entitled to vote at the Meeting shall appoint a Member who is present at the Meeting as Returning Officer for the purposes of these elections.

The Secretary shall produce all valid nomination forms received in accordance with the Constitution.

If there is not a sufficient number of candidates nominated for any position for which an election is being conducted, any two (2) Members entitled to vote at the Meeting may nominate any other Member for the position provided that the nominated Member consents to serve as a Director of the Company.

The election for the President will be held first.

The election for the Vice-President will be held second.

The election for the remaining eight (8) Directors will be held last.<sup>9</sup>

Where a person is elected to a position at an election, that person shall not be eligible to contest a later election. (For example, where a person who is nominated to be President, Vice-President and Director is elected as President, that person will be taken as being no longer nominated for the positions of Vice-President and Director.)

Each election for Executive will take place as follows:

- (a) If there is only one (1) nomination for the position, that nominated candidate shall be elected to the position.
- (b) If there is more than one (1) nomination for the position, a ballot shall take place.
- (c) Each Member eligible to vote at the meeting (including Members who are present and Members represented by proxy) will write the name of one (1) nominated candidate on a ballot paper and give the ballot paper to the Returning Officer.
- (d) A ballot paper that contains the name of one (1), and only one, candidate, will be a formal vote.
- (e) A ballot paper that does not contain the name of one (1), and only one (1) candidate, will be an informal vote.
- (f) The Returning Officer shall count the votes allotted to each candidate and the number of informal votes.
- (g) If one (1) candidate has a majority of formal votes, that candidate is elected to the position. A majority is one half plus one (disregarding any remainder) of the total number of formal votes counted.

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<sup>8</sup> Only the President and the Vice President.

<sup>9</sup> Note – The Secretary is appointed by the Board under the Act as is the Chair of the Finance and Audit Committee – the Secretary may be a Director of the Board. The way this Constitution is set up is that it assumes the Secretary will be a Director.

- (h) If no candidate has a majority of votes, and there are only two (2) candidates each tied with the same number of votes, the Returning Officer will determine which candidate is to be elected by lot.
- (i) If no candidate has a majority of votes, and there are three (3) or more candidates, the candidate with the fewest votes will be excluded from the ballot, and Members will vote a second time for the remaining candidates using the process set out above. If there are two (2) or more candidates tied with the same number of votes, being fewer votes than those received by any other candidates, the Returning Officer will determine which candidate is to be excluded by lot.
- (j) The above steps are to be repeated until a candidate has been elected.

**The election for the remaining eight (8) Directors will take place as follows:**

- (k) If there are no more than eight (8) nominations for the position of Director, each nominated candidate shall be elected to the position.
- (l) If there are more than eight (8) nominations for the position of Director, a ballot shall take place.
- (m) Each Member eligible to vote at the Meeting (including Members who are present and Members represented by proxy) will write the name of up to eight (8) nominated candidates on a ballot paper and give the ballot paper to the Returning Officer.
- (n) A ballot paper that contains the name of up to eight (8) candidates, will be a formal vote.
- (o) A ballot paper that does not contain the name of any candidate, or a ballot paper that contains the names of more than eight (8) candidates, will be an informal vote.
- (p) The Returning Officer shall count the votes allotted to each candidate.
- (q) The candidate with the fewest votes will be excluded from the count. If there are two (2) or more candidates tied with the same number of votes, being fewer votes than those received by any other candidates, the Returning Officer will determine which candidate is to be excluded by lot.
- (r) This process will be repeated (without any additional ballot taking place) until eight (8) candidates remain in the count.
- (s) These eight (8) candidates shall be elected as Directors.