

## ANNEXURE A

### SA Living Artists Inc CONSTITUTION Substituted as at 28 May 2014 AGM

#### 1. NAME

The name of the association shall be S.A. Living Artists Incorporated (**Association**).

#### 2. DEFINITIONS

In this constitution:

**Annual General Meeting** means a General Meeting described under clause 20.1;

**Association** means the incorporated association described in clause 1;

**Board** means the board of the Association described in clause 8;

**Chairperson** means the person elected as chairperson under clause 9.3;

**Deputy Chairperson** means the person elected as deputy chairperson under clause 9.2;

**Friend** means a person who has qualified as a friend of the Association by subscribing pursuant to subscription rules as determined by the Board from time to time;

**Friends** means the organisation referred to in clause 18;

**General Meeting** means a meeting described under clause 20;

**Mission** means the mission of the Association described in clause 3;

**Objects** means the objects of the Association described in clause 4;

**Office Bearers** means the Chairperson, the Deputy Chairperson, the Treasurer and the Public Officer;

**Ordinary Resolution** means a resolution passed by a simple majority vote.

**Patron** means the honorary patron of the Association;

**Public Officer** means the person so appointed by the Board from time to time to perform the duties under clause 12;

**Special General Meeting** means a General Meeting described under clause 20.2;

**Special Interest** means a direct pecuniary interest or an interest under a contractual relationship with the Association;

**Special Resolution** means a resolution passed by three-fourths majority vote; and

**Treasurer** means the person elected as deputy chairperson under clause 9.2.

### 3. **MISSION**

The mission of the Association shall be to celebrate and promote the diverse talents of South Australian living artists through unique collaborations with local, national and international communities (**Mission**).

### 4. **OBJECTS**

The objects of the Association shall be:

- 4.1 to showcase, develop, promote, and encourage the work of artists living and working in South Australia, including through holding a festival known as the "SALA Festival"; and
- 4.2 to raise funds and do all such other lawful things as may be incidental to the attainment of the Mission; and
- 4.3 to operate as a not for profit entity.

(**Objects**).

### 5. **POWERS**

The Association is empowered to:

- 5.1 do all such things as set out in section 25 of the *Associations Incorporation Act 1985* (SA) (**Act**); and
- 5.2 do all such other lawful things incidental to the attainment of the Objects.

### 6. **MEMBERSHIP**

The only members of the Association shall be the members of the Board.

### 7. **MANAGEMENT**

- 7.1 The affairs of the Association shall be managed and controlled by the Board which, in addition to any powers and authorities conferred by this constitution, may exercise all such powers and do all such things as are within the Objects, and are not by the Act or by this constitution required to be done by the Association in General Meeting.
- 7.2 The Board has the management and control of the funds and other property of the Association.
- 7.3 The Board shall have authority to interpret the meaning of this constitution and any other matter relating to the affairs of the Association on which this constitution is silent.
- 7.4 The Board shall appoint a Public Officer as required by the Act.

### 8. **THE BOARD**

- 8.1 The members of the Board shall be natural persons and shall comprise:
  - 8.1.1 the Office Bearers; and
  - 8.1.2 a maximum of 7 other persons.

### 9. **ELECTION OF OFFICE BEARERS AND VACANCIES**

- 9.1 Notice of all persons seeking election to the Board shall be given to all members of the Board with the notice calling the meeting at which the election is to take place.

- 9.2 The Deputy Chair, Treasurer and Public Officer shall be elected by the Board by Ordinary Resolution from its members for a term of up to one year at the Annual General Meeting. A person elected to one of these positions must perform the relevant duties of that position as set out in this constitution and determined by the Board from time to time. A person may hold up to 2 Officer Bearer positions at the one time. At the end of the one year term of office, the Deputy Chair, Treasurer and Public Officer may be re-elected by the Board.
- 9.3 The Chairperson shall be elected by the Board by Special Resolution for a term of up to 2 years (upon which the Chairperson may be re-elected by the Board).
- 9.4 If the person elected as Chairperson is not currently a member, upon election the Chairperson will automatically become a member. If the elected Chairperson is an existing member, another person may be elected to the Board at the next subsequent Board meeting in accordance with clause 9.1 and provided that the composition of the Board complies with clause 8.1.
- 9.5 The term of office for a Board member is 2 years. At the end of the term of office, a Board Member may elect to serve a consecutive term which must be endorsed by Special Resolution of the Board.
- 9.6 A Board member shall serve not more than 4 consecutive terms unless otherwise endorsed by Special Resolution of the Board.
- 9.7 An Office Bearer or member of the Board shall cease to hold such office upon:
- 9.7.1 that person being no longer eligible to be a Board member pursuant to section 30 of the Act or the Australian Charities and Not-for-Profit Commission Act 2012 (Cth)
  - 9.7.2 that person's resignation in writing delivered to the Association or an Office Bearer;
  - 9.7.3 absence for three successive Board meetings without explanation acceptable to the Board; or
  - 9.7.4 the permanent or temporary suspension for misconduct or conduct inconsistent with the Mission and Objects of the Association by the unanimous vote of all other Board members present at a duly constituted Board meeting (such suspension may be revoked by majority vote at a subsequent Board meeting, and a suspended member may require such suspension to be reconsidered at a General Meeting).
- 9.8 The Board may appoint a person to fill a vacancy in an Office Bearer or other Board member position, and such a person member shall hold office until the next Annual General Meeting upon which that person shall be eligible for re-election to that position without nomination.
- 9.9 The Board may function validly notwithstanding any vacancies so long as its number is not reduced below the quorum for a meeting of the Board.

## 10. SUBCOMMITTEES

- 10.1 The Board may appoint, for specific purposes as determined by the Board, sub-committees consisting of Board members and/or any other persons who shall meet as they see fit or as directed by the Board, who shall report to the Board, and who shall have any such powers as delegated by the Board.
- 10.2 Without limiting clause 10.1, the Board may appoint an executive subcommittee which shall include at least 2 Office Bearers who shall meet to carry out the day-to-day

business of the Association together with any other business delegated by the Board and who shall report to the Board at Board meetings.

## **11. PROCEEDINGS AT BOARD MEETINGS**

- 11.1 The Board shall meet as often as may be required to conduct the business of the Association and not less than 6 times each calendar year.
- 11.2 Questions arising at any meeting of the Board shall be decided by an Ordinary Resolution, and in the event of equality of votes the Chairperson shall have a casting vote in addition to a deliberative vote.
- 11.3 The quorum at any Board meeting shall be one half of the members of the Board but in any event shall be one half of the members of the Board.
- 11.4 The Chairperson or two other members of the Board shall have power to call a meeting of the Board. Notice of meetings shall be given at the previous Board meeting or by 7 days written notice distributed to all Board members or in an emergency by such other notice as shall be ratified by the Board.
- 11.5 The Board may, by Ordinary Resolution, invite 2 ex-officio persons to contribute to meetings of the Board, although such persons will not be members of the Board and will not be entitled to vote.
- 11.6 Board members may express the views and interests of any organisation which they represent or of which they are a member, but must vote in the interests of the Association and to carry out its Mission and Objects.
- 11.7 A member of the Board having a direct or indirect pecuniary interest in a matter to be resolved by the Board must disclose the nature and extent of that interest to the Board as required by the Act, and shall not vote with respect to that matter. The member of the Board must disclose the nature and extent of his or her interest at the next Annual General Meeting.

## **12. THE PUBLIC OFFICER**

The Public Officer shall notify the Office of Consumer and Business Services of his or her appointment and shall file such other returns and notices as shall be required by law. The Public Officer shall hold office until another person is appointed to that position by the Board.

## **13. DUTIES OF THE CHAIRPERSON**

- 13.1 The Chairperson shall ensure the safekeeping of the common seal.
- 13.2 The Chairperson shall chair executive subcommittee (if any), Board and General Meetings except that in the absence of the Chairperson or at the request of the Chairperson the Deputy Chairperson shall act as chairperson, or if the Deputy Chairperson is not present or declines, then another member will act as chairperson of the meeting as elected by those members present at the meeting.
- 13.3 The chairperson at any meeting shall have a personal vote and shall in addition have a casting vote if votes are equal.
- 13.4 The Chairperson together with the Deputy Chairperson shall prepare the agenda for Board and General Meetings.
- 13.5 The Chairperson of a meeting shall encourage full balanced participation by all members and shall decide on matters of order.
- 13.6 The Chairperson shall act as spokesperson for the Association in relation to strategic matters or in the case of an emergency and the general manager shall act as the

spokesperson in relation to operation matters, unless alternative spokespersons have been appointed by the Board. The spokesperson shall make statements in accordance with previously agreed policy, or in an emergency following consultation with at least 2 members of the Board.

#### **14. FINANCIAL REPORTING AND DUTIES OF THE TREASURER**

- 14.1 The Treasurer shall ensure that all monies received by the Association are paid into an account authorized by the Board in the name of the Association. Payments shall be as electronic funds transfer, petty cash, or by cheque, signed by 2 authorized signatories of the Association of whom there shall be no more than 5 appointed by the Board. Employees or non-members of the Association may be signatories but not more than 1 of them shall sign any cheque. Expenditures that are not in the ordinary course of business or that are over a limit determined by the Board from time to time shall be authorized in advance by an Ordinary Resolution of the Board or a General Meeting.
- 14.2 The Treasurer shall ensure that accounting records are kept and retained as necessary to correctly record and explain the financial transactions and financial position of the Association, including records of all receipts and payments and other financial transactions of the Association. Such records shall be available for inspection by any Board member
- 14.3 The Treasurer shall ensure that financial budgets and statements of the Association are prepared and shall submit a report on the finances of the Association during the period since the previous meeting at each Board meeting or General Meeting (as applicable).
- 14.4 The Treasurer shall ensure that annual financial statements comprising a balance sheet and a profit and loss statement shall be prepared following the end of the Association's financial year, which shall commence on 1<sup>st</sup> January and end on 31<sup>st</sup> December unless otherwise altered by Ordinary Resolution at a General Meeting.
- 14.5 The Treasurer must ensure that the Association complies with any other relevant financial reporting obligations prescribed by the Act, including presenting any required accounts and reports before members, audit of financial accounts or lodging documents with the Office of Consumer and Business Services (if applicable).

#### **15. DUTIES OF THE DEPUTY CHAIRPERSON**

- 15.1 The Deputy Chair shall ensure that notice of meetings is given in accordance with the provisions of this constitution.
- 15.2 The Deputy Chair shall ensure that records are kept of the Association including the constitution and policies, records of members, a register of minutes of meetings and of notices, a file of correspondence, and records of submissions or reports made by or on behalf of the Association.
- 15.3 In the absence of the Deputy Chair or at the request of the Deputy Chair or of a majority of the meeting another person shall be elected as minutes secretary.

#### **16. EMPLOYEES**

A person employed permanently or regularly by the Association on a substantial basis shall not be a member of the Board but may be appointed as a member of any sub-committee in accordance with clause 10.

#### **17. PATRON**

- 17.1 A person may be elected by the Board by Ordinary Resolution to be the Patron.
- 17.2 The Patron shall be kept informed of important matters and general progress of the Association by the Board.

17.3 The Patron is entitled to be notified of General Meetings and Board meetings and is allowed to attend but is not entitled to vote at such meetings.

17.4 The Patron shall hold office until the position is resigned by notice in writing to the Chairperson or until removal by the Board by Ordinary Resolution.

## 18. FRIENDS

18.1 The Board may establish and support an organisation of Friends to be known as the "Friends of SALA" or such other name as determined by the Board from time to time.

18.2 The Board may from time to time:

18.2.1 appoint and remove a president and officers of the organisation; and

18.2.2 specify rules, procedures, and purposes for the operation of the organisation.

## 19. COMMON SEAL

19.1 The Association shall have a common seal upon which its name shall appear in legible characters.

19.2 The seal shall not be used without an Ordinary Resolution of the Board or of a General Meeting, and every use of the seal shall be recorded in the minute book of the Association.

19.3 The affixing of the seal shall be witnessed by the Chairperson and another Office Bearer.

## 20. GENERAL MEETINGS

### 20.1 Annual General Meetings:

20.1.1 The Annual General Meeting shall be held at least once in each calendar year and within 5 months after the end of the financial year described in clause 14.4.

20.1.2 The business of the Annual General Meeting shall be:

- (a) to confirm the minutes of the preceding Annual General Meeting;
- (b) to receive the Chairperson's report for the previous financial year;
- (c) to receive the Treasurer's report and the audited financial statements for the previous financial year, together with the financial budget for the current financial year;
- (d) to announce the commencement of the term of nominated members;
- (e) to elect the remainder of the Board members;
- (f) to elect the Office Bearers; and
- (g) to conduct any other business placed on the agenda before the commencement of the meeting.

20.2 **Special General Meetings:**

A Special General Meeting shall be called by the Chairperson or Deputy Chairperson within 28 days of receipt of a directive of the Board or by a written request of 3 Board members, for the purposes specified in the directive or request (as applicable).

20.3 **Notice of General Meetings:**

20.3.1 Written notice of not less than 7 days of all General Meetings shall be distributed to all Board members, displayed at the premises occupied by the Association and otherwise publicised as appropriate.

20.3.2 The notice shall set out where and when the meeting will be held, and particulars of the nature and order of the business to be transacted at the meeting.

20.3.3 Notice of a meeting at which a Special Resolution is to be proposed must be given at least 21 days prior to the date of the meeting.

20.4 **Proceedings at General Meetings:**

20.4.1 The quorum at any General Meeting shall be 6 people.

20.4.2 If at any General Meeting there is no quorum within 30 minutes of the time appointed for the meeting then a majority of members present may decide to adjourn the meeting for a period not exceeding 14 days. The quorum for such adjourned meeting shall be reduced to 5 failing which if the quorum is not present within 30 minutes the members present will constitute the quorum.

21. **VOTING**

21.1 Voting shall be by Ordinary Resolution except where otherwise stated.

21.2 Voting shall be by show of hands except in relation to:

21.2.1 any contested election at an Annual General Meeting or Board meeting which shall be by secret ballot; or

21.2.2 any other matter that by a show of hands is required to be by secret ballot.

21.3 Persons with a Special Interests may be invited to attend any meeting and to speak at the discretion of the Chairperson but such persons may not vote.

22. **PROXIES**

A member shall be entitled to appoint in writing a natural person (who must also be a member of the Association) to be that person's proxy, and attend and vote on that person's behalf at any General Meeting of the Association.

23. **MINUTES**

23.1 Proper minutes of all proceedings of General Meetings and of Board meetings shall be entered within one month after the relevant meeting in minute books kept for the purpose.

23.2 The minutes must be confirmed by the members at a subsequent General Meeting or Board meeting (as applicable).

- 23.3 The minutes shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting at which the minutes are confirmed.
- 23.4 Where minutes are entered and signed they shall, until the contrary is proved, be evidence that the meeting was convened and duly held, that all proceedings held at the meeting shall be deemed to have been duly held, and that all appointments made at a meeting shall be deemed to be valid.

#### 24. **CONFIDENTIALITY**

The proceedings of any Board meeting or General Meeting and all related correspondence shall be kept confidential by members save to the extent that the Chairperson of the meeting decides to release such obligation of confidentiality, or as agreed by Ordinary Resolution of that meeting, or otherwise as required by law.

#### 25. **AMENDMENT OF CONSTITUTION AND RULES**

The Board by Special Resolution may repeal or amend this constitution and may make, repeal or amend any rules or bylaws of the Association for the proper administration of meetings or business provided that such amended constitution, rules or bylaws, and such repeal or amendments, shall be notified to the members at the subsequent General Meeting.

#### 26. **INDEMNITY**

26.1 To the extent permitted by law and provided that the member is not indemnified by another person (including an insurer under an insurance policy any part of the premium of which is contributed by the Association), the Association indemnifies every person who is or has been a member against any liability incurred by that person:

26.1.1 as a member; and

26.1.2 to a person other than the Association;

unless the liability arises out of conduct on the part of the member which:

26.1.3 involves negligence, default, breach of duty or breach of trust; or

26.1.4 is contrary to the Association's express instructions.

26.2 To the extent permitted by law and provided that the member is not indemnified by another person (including an insurer under an insurance policy any part of the premium of which is contributed by the Association), the Association indemnifies every member against any liability for costs and expenses incurred by the person as a member:

26.2.1 in defending any proceedings, whether civil or criminal, in which judgement is given in favour of the person or in which the person is acquitted; or

26.2.2 in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Act.

26.3 Unless the Board otherwise determine, this clause 26 ceases to apply in favour of a person who does not to the satisfaction of the Board co-operate with the Association in investigating, defending or resolving the matter to which this clause would otherwise apply.

#### 27. **PROHIBITION AGAINST SECURING PROFITS FOR MEMBERS**

The income property and funds of the Association shall be used and applied solely towards the promotion of the Objects and no portion shall be paid or transferred directly or indirectly to the members or their associates provided that nothing herein contained shall prevent any bona fide



payment in good faith to any person in return for services actually rendered or expenses incurred or to any person in furtherance of the Objects and without undue preference.

28. **WINDING UP**

The Association shall not be dissolved except in accordance with the Act or by Special Resolution of a General Meeting.

29. **APPLICATION OF SURPLUS ASSETS**

On winding up all surplus assets (as defined in the Act) shall be transferred to such other body formed for promoting similar objects to the Objects or for charitable objects as shall be approved by the Board provided that:

- 29.1 such other body shall prohibit the distribution of income and property to the members to the extent stated herein; and
- 29.2 the other body is a deductible gift recipient for the purposes of the *Income Tax Assessment Act 1997* (Cth) ; and
- 29.3 that body is registered with the Australian Charities and Not-for-Profit Commission.