

Constitution

Independent Arts Foundation

(SA) Incorporated

21 June 2022

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Constitution

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply in this Constitution, unless the context requires otherwise:

Act means the *Associations Incorporation Act 1985* South Australia (as amended or substituted from time to time) and the Regulations made under it.

Annual General Meeting means an annual general meeting of the Association, attended by the Board and Members.

Association means Independent Arts Foundation (SA) Incorporated.

ATO means the Australian Taxation Office.

Board means the board of management of the Association.

Board Member means a member of the Board.

Chair means the Chair of the Board.

Financial Year means 1 July – 30 June.

Income Tax Act means the *Income Tax Assessment Act 1997* (Cth).

Member means a member of the Association.

Objects means the objects of the Association, as set out in clause 3.

Powers means the powers of the Association, as set out in clause 4.

Public Fund means the public fund held by the Association listed on the Register of Cultural Organisations as required by subsection 30-300(3) of the Income Tax Act.

Special Resolution means a resolution passed at a duly convened meeting of the Board in accordance with paragraph (b) of the definition of 'special resolution' in subsection 3(1) of the Act.

1.2 Interpretation

In this Constitution, unless the context requires otherwise:

- (a) the singular includes its plural and vice versa
- (b) words denoting any gender include all genders
- (c) headings are for convenience only and do not affect interpretation words such as **including** or **for example** do not limit the meaning of the words preceding them

- (d) a reference to:
 - (i) a clause, paragraph, schedule or annexure is to a clause, paragraph, schedule or annexure in or to this Constitution
 - (ii) writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible or tangible form
 - (iii) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it; and
 - (iv) a provision within legislation (or subordinate legislation) is to that provision as amended or replaced.

2. The Association

- (a) The name of the Association is Independent Arts Foundation (SA) Incorporated.
- (b) The name of the Association may be changed by Special Resolution.

3. Objects

The Objects of the Association are to:

- (a) support the development of the arts in South Australia
- (b) raise funds to provide grants and financial sponsorship for specific purposes and activities that align with the Association's purpose
- (c) organise occasions for Members of the IAF and the wider community to come together to share artistic presentations, discussions and events
- (d) contribute grants to emerging artists of all ages and in all genres, to develop their skills, expertise, works or projects
- (e) encourage the involvement of the wider community in this work including sponsorship for the IAF and its activities; and
- (f) enter into joint ventures with any person or association or such other activities as are in the furtherance of these Objects.

4. Powers

- (a) In addition to the powers set out in section 25 of the Act, the Association may:
 - (i) raise funds by whatever means it thinks fit
 - (ii) write, publish and distribute pamphlets, periodicals, leaflets, advertisements, newspapers, books and other written material in physical or electronic form

- (iii) participate in the establishment or support of any charitable or educational organisation or body with objects similar to the Objects of the Association
- (iv) accept grants, subsidies, gifts of real or personal property, whether subject to any trust or not
- (v) acquire, hold, deal with, and dispose of, any real or personal property
- (vi) open and operate bank accounts
- (vii) invest its moneys in any security or investments as the Board may determine from time to time
- (viii) borrow money upon such terms and conditions as the Board thinks fit and as per section 25 of the Act
- (ix) give such security for the discharge of liabilities incurred by the Association as the Board thinks fit
- (x) appoint agents to transact any business of the Association on its behalf
- (xi) enter into any other contract it considers necessary or desirable; and
- (xii) do all such other acts and things as are or may be incidental or conducive to the attainment of the Objects and exercise of the Powers or any of them.

5. Membership and Subscriptions

- (a) The Members of the Association shall be those persons who are Members at the date on which this amended Constitution is substituted for its predecessor and shall be entitled to such grade of Membership as was in place at that time, and any persons subsequently admitted or readmitted as Members in accordance with this Constitution.

Types and Requirements of Membership

- (b) The Association has the following types of Memberships:
 - (i) Members
 - (ii) Honorary Members
 - (iii) Life Members.
- (c) The qualifications necessary for the admission of Members to each type of Membership are as follows:
 - (i) Members – must subscribe to the objects of the Association and be financial. One-off complimentary 12 months Memberships (such as guest speakers at IAF Events) may be given at the discretion of the Board
 - (ii) Honorary Members – must, in the opinion of the Board, have served the arts with distinction by making a recognised contribution over time to the arts and who have been actively involved in enhancing public knowledge of the role of the arts in South Australian society
 - (iii) Life Members – must have been a Member for at least 5 years continuously immediately prior to the award of status of Life Member and in the opinion of the Board, made a recognised contribution over time to or undertaken outstanding work for the Association.

- (d) The Board reserves the right to review a Member's status as Honorary or Life Member and to revoke such status at any time, in its absolute discretion.
- (e) The rights, privileges and obligations of Members as contained in this Constitution shall be common to all Members except that Honorary Members are not entitled to vote nor to hold any office in the Association.
- (f) The Board shall have the sole right to admit Members and application for Membership shall be made in the manner prescribed by the Board and no reason given for the rejection of any application.

Subscription Fees

- (g) Rates and terms of subscription of Membership other than Honorary or Life Members shall be determined from time to time by the Board and agreed to by a majority of Members at a General Meeting.
- (h) The Board shall fix the time at which a subscription is payable and the period in respect of which it is payable.

Resignation, Termination and Suspension of Membership

- (i) Any Member whose subscription remains unpaid for three calendar months after the due date may be declared by the Board to be no longer a Member.
- (j) A Member may tender their resignation as a Member at any time.
- (k) The Board may by resolution suspend the Membership of any Member for such period as the Board thinks fit or expel any Member on account of conduct which in the opinion of the Board is detrimental to the interests of the Association. No such resolution for suspension or expulsion shall be passed unless the Board has given the Member an opportunity to be heard.
- (l) Any Member ceasing to be a member for any reason shall have no right or claim upon the Association, its property or funds (including the refund of subscription fees).
- (m) The Board may reinstate to Membership any person whose Membership was suspended or ceased at any time and on terms or conditions as the Board thinks fit.

Register of Members

- (n) A register of Members shall be kept by the Board as required by the Act, setting out the type of Membership and such particulars as are required by the Board from time to time.
- (o) Every Member shall provide the Board with all information necessary to complete the register of Members as required by the Board including name, address, email, phone number, date of admission and cessation and reasons for termination (if any).
- (p) No name shall be entered in the register save on authority of the Board nor shall any name be removed nor type of Membership changed save on authority of the Board or upon receipt by the Board of a written resignation of Membership.

6. Management of the Association's affairs

The affairs of the Association are to be managed and controlled exclusively by the Board except where this Constitution or the Act requires them to be done by the Association in a General Meeting.

7. Board of Management

7.1 Composition of the Board

- (a) The number of Board Members will be:
 - (i) a maximum of 9 natural persons and
 - (ii) a minimum of 5 natural personssubject to amendment by Special Resolution.
- (b) A majority of Board Members must reside in South Australia; and Board Members must not be employees of the Association.

7.2 Appointment and election of the Board

- (a) Members of the Board will be elected from eligible Members entitled to stand for election by the Members in General Meeting entitled to vote in such election.
- (b) The Board may at any time appoint a natural person to fill a casual vacancy on the Board.
- (c) If at any time the number of Board Members drops below 5, the remaining Board Members may continue to function as the Board for 90 days.

7.3 Term of Office

- (a) The term of office of each Board Member begins on their appointment to the Board and ends on the earlier of:
 - (i) the 3rd Annual General Meeting occurring after their appointment
 - (ii) for any appointment to fill a casual vacancy, the next Annual General Meeting
 - (iii) their resignation in writing; or
 - (iv) disqualification under clause 7.4.
- (b) A Board Member whose term of office has ended is eligible for nomination, election or co-option to the Board for a further term, if:
 - (i) the Board Member has served no more than 6 years; or
 - (ii) the resolution to elect is passed unanimously and exceptional circumstances apply; or
 - (iii) one year after the end of their term of office has expired.

7.4 Disqualification of Board Members

- (a) A Board Member ceases to hold office if:
 - (i) the Board Member is disqualified under section 30 of the Act
 - (ii) the Board Member is expelled under paragraph (b)

- (iii) the Board Member is permanently incapacitated by ill health; or
 - (iv) the Board Member is absent without apology for more than 3 consecutive Board meetings or for more than 3 Board meetings in a Financial Year.
- (b) A Board Member may be expelled from the Board by a Special Resolution of the Members in General Meeting in the following ways:
- (i) the Board Member has failed in the observance of this Constitution or it would be detrimental to the interests of the Association for the person to remain as a Board Member
 - (ii) the Board Member has received 21 clear days' notice of the meeting at which the expulsion is proposed and of the intended resolution of the Board Member's expulsion; and
 - (iii) the Board Member is given the opportunity to attend and address the General Meeting at which the expulsion is proposed.

8. Office Bearers

8.1 The Office

- (a) The Office Bearers of the Association are the Chair, Deputy Chair, Treasurer and Public Officer.
- (b) Subject to paragraph (c) Office Bearers are appointed and may be removed by the Members in General Meeting.
- (c) A Board Member may resign from an Office Bearer position at any time by giving written notice to the Board. The Board Member may retain their position on the Board subject to sub-clauses 7.3 and 7.4 above.

8.2 Chair

The functions of the Chair are:

- (a) to chair all General Meetings and Board meetings
- (b) to represent the Board publicly
- (c) to ensure that agenda papers are prepared for Board meetings
- (d) to ensure that proper records are kept of the affairs of the Association
- (e) to ensure that proper notices are given of meetings in accordance with this Constitution and the Act
- (f) to determine matters of order at Board meetings and to ensure that those who are entitled to participate in meetings have a reasonable opportunity to do so.

8.3 Deputy Chair

The function of the Deputy Chair is to act for the Chair when the Chair is unavailable or unwilling to act.

8.4 Treasurer

The functions of the Treasurer are to ensure that:

- (a) all money due to the Association is collected and received and all payments authorised by the Association are made; and
- (b) correct books and accounts are kept showing the financial affairs of the Association including full details of all receipts and expenditure connected with the activities of the Association.

8.5 Public Officer

The functions of the Public Officer are those prescribed by the Act for the person appointed to that office under section 56 of the Act.

9. Board Meetings

9.1 Frequency

The Board must meet as often as is necessary to conduct the business of the Association and, in any case, not less than 4 times each Financial Year.

9.2 Quorum

A quorum of meetings of the Board is not less than any 5 Board Members. If within 30 minutes from the time appointed for the meeting a quorum is not present, the meeting will be dissolved.

9.3 Calling Meetings

The Chair or any 3 other Board Members may convene a Board meeting.

9.4 Notice of Meetings

Notice of a Board meeting must be given:

- (a) at the previous Board meeting; or
- (b) in case of emergency by notice given to Board Members as soon as is practicable in the circumstances; or
- (c) in any other case, by 7 days' notice to Board Members.

9.5 Form of Meetings

Meetings may be conducted in person, by video or teleconference, online or by telephone.

9.6 Minutes

The Board must ensure that minutes are kept of all its meetings.

9.7 Voting and Decisions

- (a) Questions arising at a Board meeting by the Board must be determined by a majority of the votes of Board Members.
- (b) Each Board Member present at a Board meeting is entitled to 1 vote. However, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.

10. Sub-committees

The Board may appoint sub-committees and delegate any of its functions to them. There must be at least one Board Member on each sub-committee but otherwise its Members need not be Board Members. Sub-committees are recommendatory only and not deliberative, and all resolutions with policy or financial impacts must be referred back to the Board for resolution.

11. Advisory Committees and Patrons

The Board may at any time and at its discretion, appoint suitably qualified persons as External Advisors to the Board or Patrons of the Association. External Advisors and Patrons are not entitled to voting rights on any questions or resolutions at Board meetings.

12. Disclosure of Interest

- (a) A Board Member who has a direct or indirect pecuniary interest in a contract, or proposed contract, with the Association must disclose the nature and extent of the interest to the Board in accordance with the Act.
- (b) The Board must record the disclosure in the minutes of a Board meeting.
- (c) The Chair must ensure a Board Member who has a direct or indirect pecuniary interest in a contract, or proposed contract, complies with the Act.

13. General Meetings

- (a) There must be one Annual General Meeting held in each year within 5 months after the end of the Financial Year at a time and place fixed by the Board.
- (b) A Special General Meeting may be called by the Board at any time and must be called by the Board within one month of requisition signed by at least 7 Members of the Association, stating the nature of the business to be transacted.
- (c) At least 14 days' notice shall be given of a General Meeting including the general nature of the business to be transacted. Notice may be given by mail or email and a General Meeting will not be invalidated by the accidental failure to give notice to any Member.
- (d) All Members except Honorary Members will have voting rights at a General Meeting.

- (e) The business of the Annual General Meeting is to:
 - (i) confirm the minutes of the preceding Annual General Meeting
 - (ii) receive the Chair's report for the previous Financial Year
 - (iii) receive the Treasurer's report and the audited financial statements for the previous Financial Year
 - (iv) receive the Annual Report for the previous Financial Year
 - (v) elect Board Members and Office Holders, and
 - (vi) conduct any other business placed on the agenda before the meeting.
- (f) No business shall be transacted at a General Meeting unless there is a quorum of 10 Members present personally whose subscriptions are not in arrears.
- (g) If within a half hour of the time appointed to commence a General Meeting a quorum is not present, if convened upon requisition of Members it shall be dissolved, but in any other case it shall stand adjourned to the same day in the next week at the same time and place or such other place and time as the Board may determine and if no quorum is present at that meeting within a half hour the quorum will be reduced to 8 Members.
- (h) The Chair shall chair General Meetings, and if not present within 15 minutes then the Deputy Chair or, if not present or able or willing to act, then a chair elected by the Members.
- (i) The Chair may adjourn a General Meeting at any time to another time and place but no business shall be transacted at the adjourned meeting except unfinished business as previously notified. If a meeting is adjourned for 30 days or more notice must again be given of the meeting.
- (j) Votes at a General Meeting shall be decided on a show of hands unless a poll is demanded (prior to or after declaration of the result of show of hands) by the Chair or by at least 3 Members present in person or by proxy. Unless a poll is so demanded then a declaration by the Chair that a motion was carried or carried unanimously or by a particular majority or lost, and an entry to that effect in the Association's book of minutes shall be conclusive evidence of the fact. The demand for a poll may be withdrawn.
- (k) Each Member present or by proxy or each institutional Member by nominee shall be entitled to vote.
- (l) In the event of a deadlock the Chair is entitled to a second or casting vote.
- (m) The instrument appointing a proxy shall be in the form required by the Board and under the hand of the appointor or their attorney. A valid proxy shall entitle the holder to vote as a Member including on any poll.
- (n) A proxy must be provided to the Association at least 48 hours prior to the General Meeting. A valid proxy shall be valid notwithstanding the previous death or incapacity of the appointor if no notice of such death or incapacity has been received by the Association prior to the General Meeting.

14. Finances

14.1 Funds Source

- (a) The funds of the Association will be derived from fees, grants, donations, sponsorship and revenue received from ordinary business activities and other sources as the Board determines.
- (b) Subject to the Act, the Association must not make a payment from its income or capital, or dispose of any of its assets in specie, to Board Members or any of them, or to associates of Board Members or any of them, except reasonable remuneration of a Board Member for work done by the Board Member for or on behalf of the Association or payments or dispositions that are incidental to activities carried on by the Association in accordance or consistent with the Objects.

14.2 Financial Year

The Association's Financial Year begins on 1 July in each year and ends on 30 June in the following year.

14.3 Records

The Association must:

- (a) keep all records necessary properly to account for the receipt and expenditure of the Association's funds and for the preparation of proper financial statements
- (b) prepare and maintain all financial records and statements in accordance with the Act and at law; and
- (c) in any case, prepare proper annual accounts to be made available at the Annual General Meeting.

14.4 Audit

The Board must ensure that the Association conforms with the audit requirements of the Act and the Australian Charities and Not-for-profits Commission financial reporting obligations.

15. Public Fund

- (a) The Association will maintain a Public Fund located in Australia known as the Independent Arts Foundation (SA) Incorporated Special Fund Raising Account. (**Public Fund**).
- (b) Donations will be deposited into the Public Fund listed on the Register of Cultural Organisations. These monies will be kept separate from other funds of the Association and will only be used to further the Objects. Investment and distribution of monies in this Public Fund will be made in accordance with guidelines for public funds as specified by the ATO.
- (c) The Public Fund will be administered by the Board, the majority of who, because of their tenure of some public office or their professional standing, have an underlying community responsibility, as distinct from obligations solely in regard to the Objects.

- (d) No monies or assets in this Public Fund will be distributed to Board Members, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.
- (e) The relevant Department responsible for the administration of the Register of Cultural Organisations will be notified of any proposed amendments or alterations to provisions for the Public Fund, to assess the effect of any amendments on the Public Fund's continuing deductible gift recipient status.
- (f) Receipts for gifts to the Public Fund must state:
 - (i) the name of the Public Fund and that the receipt is for a gift made to the Public Fund
 - (ii) the Australian Business Number of the Association
 - (iii) the fact that the receipt is for a gift; and
 - (iv) any other matter required to be included on the receipt pursuant to the requirements of the Income Tax Act.
- (g) The Association must comply with any rules that the Treasurer or the Minister for the Arts make to ensure that gifts made to the Public Fund will only be used for the Objects.
- (h) The Association must provide to the relevant Department statistical information on the gifts made to the Public Fund every 6 months.

16. Amending the Constitution

This Constitution can be amended by Special Resolution by the Members in General Meeting.

17. Winding up

17.1 Winding up of Public Fund

- (a) The Public Fund may be wound up by Special Resolution by the Members in General Meeting.
- (b) If upon the winding up or dissolution of the Public Fund, there remains after satisfaction of all its debts and liabilities, any property or funds, the property or funds shall not be paid to or distributed among its Board Members, but shall be given or transferred to some other fund, authority or institution:
 - (i) with objects similar to the Objects; and
 - (ii) with rules prohibiting the distribution of its or their income among its or their Members; and
 - (iii) eligible for tax deductibility of donations under Subdivision 30-B, section 30-100, of the Income Tax Act; and
 - (iv) listed on the Register of Cultural Organisations maintained under the Income Tax Act.

17.2 Winding up of Association

- (a) The Association may be wound up:
 - (i) in accordance with section 41 of the Act; or
 - (ii) by Special Resolution of the Members in General Meeting.
- (b) A Board Member is not liable to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of a winding up of the Association.
- (c) Subject to the Act, and any court order, any surplus assets (including gift funds and public funds) that remain after the Association is wound up must be distributed to one or more charities:
 - (i) in the circumstances where the Association has endorsement from the ATO as a deductible gift recipient:
 - (A) with charitable purpose(s) similar to, or inclusive of, the Objects
 - (B) which also prohibit the distribution of any surplus assets to its Members to at least the same extent as the Association
 - (C) that is or are deductible gift recipients within the meaning of subdivision 30-B, section 30-100 of Income Tax Act; and
 - (D) that is listed on the Register of Cultural Organisations
 - (ii) in the circumstances where the Association does not have endorsement from the ATO as a deductible gift recipient:
 - (A) with charitable purpose(s) similar to, or inclusive of, the Objects; and
 - (B) which also prohibit the distribution of any surplus assets to its Members to at least the same extent as the Association.
- (d) The decision as to the charity or charities to be given the surplus assets must be made by a Special Resolution at or before the time of winding up. If the Board does not make this decision, the Association may apply to the Supreme Court to make this decision.
- (e) If the Association's deductible gift recipient endorsement is revoked (whether or not the Association is to be wound up), any surplus public funds must be transferred to one or more charities that meet the requirements of 17.1(b) as decided by the Board.
- (f) For the purpose of this clause:
 - (i) **gift funds** means:
 - (A) gifts of money or property for the Objects of the Association
 - (B) contributions made in relation to a fund-raising event held for the Objects of the Association; and

- (C) money received by the Association because of such gifts and contributions
- (ii) **contributions** and **fund-raising event** have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).

18. Notice

The Association may give notice to a Board Member or may publish information required to be given to a Board Member in any one or more of the following ways:

- (a) by notice posted to the Board Member's last known street address
- (b) by email to the Board Member's last known email address; or
- (c) by publishing the notice on the Association's website.

19. Common Seal

- (a) The common seal of the Association will be kept as required by the Public Officer.
- (b) The common seal will not be affixed to any instrument except by the authority of the Board and the affixing of the common seal must be attested by the signatures of 2 Board Members