

CORPORATIONS LAW

CONSTITUTION

OF

**COMMUNITY BROADCASTING FOUNDATION LIMITED
(ACN 008 590 403)**

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CORPORATIONS LAW

COMPANY LIMITED BY GUARANTEE

COMMUNITY BROADCASTING FOUNDATION LIMITED
ACN 008 590 403

CONSTITUTION

DEFINITIONS AND INTERPRETATION

1. **Definitions**

In this Constitution:

"Address for Service" means the address of a Member as set out in the Register or such other address as notified by the Member to the Secretary as that Member's address for service;

"Additional Grants Advisory Committee" means each committee (if any) established in accordance with Clause 62(e);

"Advisory Committee" means each Original Grants Advisory Committee and each Additional Grants Advisory Committee;

"Board" means the board of directors and governing council of the Company;

"Community Broadcasting Association of Australia" means the body known by that name and any successor to that body whether incorporated or unincorporated;

"Company" means Community Broadcasting Foundation Limited (ACN 008 590 403);

"Constitution" means this Constitution as amended from time to time;

"Department" means the Department of Communication, Information Technology and the Arts of the Commonwealth of Australia or such other Department of State as from time to time has responsibility for the control and administration of the Broadcasting Services Act 1992 (Cth);

"Law" means the Corporations Law;

"Member" means a member of the Company;

"National Committee" means the national committee or other governing body of the Community Broadcasting Association of Australia;

"Original Grants Advisory Committee" means each of the General Grants Advisory Committee, the Ethnic Grants Advisory Committee, the Indigenous Grants Advisory Committee and the Print Handicapped Grants Advisory Committee established in accordance with Clause 62(a) to (d), respectively;

"Register" means the register of Members to be kept under Clause 5;

"seal" means the common seal of the Company;

"Secretary" means any person appointed to perform the duties of a secretary of the Company and includes an honorary secretary; and

"Territory" means the Australian Capital Territory.

2. **Interpretation**

In this Constitution unless a contrary intention is apparent:

- (a) reference to a Clause is a reference to a clause of this Constitution;
- (b) the headings to the various Clauses and parts of Clauses do not affect the construction of the Clauses;
- (c) "person" and words importing persons include bodies corporate;
- (d) powers conferred on the Company, the Board, a member of the Board, a Committee or a Member may be exercised at any time and from time to time;
- (e) "writing" and "written" include any method of representing or reproducing words in a visible form including, without limiting the generality of the foregoing, telegram, telex, facsimile or any other mode of transmission capable of producing or reproducing words in visible form;
- (f) unless otherwise defined in this Constitution, words which are given a meaning in the Law have the same meaning in this Constitution;
- (g) the references to notices in Clauses 70 and 71 include not only formal notices of meeting but also all documents and other communications from the Company to the Members but do not include cheques;
- (h) words importing the singular include the plural and vice versa and each gender includes each other gender; and
- (i) a reference to any statute or subsidiary legislation includes a reference to that statute or legislation as re-enacted, amended, modified or replaced from time to time.

PURPOSE

3. **Purpose**

The Company is established for the following purposes:

- (a) to solicit grants, donations, gifts, bequests and other monetary contributions from Government, the private sector, institutions, trade unions, other common interest groups and individuals;

- (b) to provide seeding sustaining and special purpose finance to community radio stations in Australia;
- (c) to provide grants for research and development by groups aspiring to form community television stations;
- (d) to provide seeding sustaining and special purpose finance to non profit organisations which produce or intend to produce programs for broadcasting on community radio stations;
- (e) to provide development grants to groups which aspire to form community radio stations, to enable them to improve their capabilities and to employ legal and engineering advice in the preparation of planning proposals and licence applications;
- (f) to provide seeding grants to facilitate equipment purchases by community radio stations, and to provide reseeding grants to stations at which capital depreciation is advanced;
- (g) to provide budgetary support in order to supplement community radio stations' recurrent funding, innovation grants to community radio stations for experimental and other innovative programming, and to provide to community radio stations grants for training, research and study, publications and audience surveys;
- (h) to make loans to community radio stations as emergency assistance in case of financial difficulty;
- (i) to make loans in place of grants to any community radio station for any of the purposes for which grants may be made under paragraphs (f) and (g) of this Clause 3;
- (j) to make grants or loans to enable special broadcasting projects to be undertaken and for such other purposes as support the aims of community broadcasting;
- (k) to make grants or loans to associations formed by community broadcasting organisations;
- (l) solely for the purpose of carrying out the objects set out in paragraphs (a) to (k) of this Clause 3 and not otherwise:
 - (i) to hold or arrange competitions and provide or contribute towards the provision of prizes, awards and distinctions in connection therewith, provided that no Member will be entitled to receive any prize, award or distinction of monetary value except

as a successful competitor at any competition held or promoted by the Company;

- (ii) to subscribe to, become a member of and co-operate with or amalgamate with any other association or organisation, whether incorporated or not, whose objects are similar to those of the Company, provided that the Company must not subscribe to or support with its funds or amalgamate with any association or organisation which does not prohibit the distribution of its income and property among its members to an extent at least as great as that imposed on the Company under or by virtue of Clause 3C;
- (iii) to buy, sell and deal in all kinds of apparatus and all kinds of provisions, liquid and solid, required by the Members or persons frequenting the Company's premises;
- (iv) to purchase, take on lease or in exchange, hire and otherwise acquire any lands, building easement or property, real and personal, and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the objects of the Company, provided that if the Company takes or holds any property which may be subject to any trusts the Company may only deal with that property in such manner as is allowed by law having regard to such trusts;
- (v) to enter into any arrangements with any Government or authority, supreme, municipal, local or otherwise, that may seem conducive to the Company's objects or any of them and to obtain from any such Government or authority any rights, privileges and concessions which the Company may think it desirable to obtain and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- (vi) to appoint, employ, remove or suspend such managers, clerks, secretaries, servants, workers and other persons as may be necessary or convenient for the purposes of the Company;

- (vii) to establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the Company or the dependants or connections of any such persons, to grant pensions and allowances, and to make payments towards insurance and to subscribe or guarantee money for charitable or benevolent objects, or for any public, general or useful object;
- (viii) to construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, buildings, grounds, works or conveniences which may seem calculated directly or indirectly to advance the Company's interests, and to contribute to subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control thereof;
- (ix) to invest and deal with the money of the Company not immediately required in such manner as may be permitted by law for the investment of trust funds;
- (x) to borrow or raise or secure the payment of money in such manner as the Company may think fit and secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the Company in any way and in particular by the issue of debentures, perpetual or otherwise, charged upon all or any of the Company's property (both present and future), and to purchase, redeem or pay off such securities;
- (xi) to make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (xii) to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company;
- (xiii) to take or hold mortgages, liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any part of the Company's property of whatsoever kind sold by the Company or any money due to the Company from purchasers

and others;

- (xiv) to take any gift of property whether subject to any special trust or not for any one or more of the objects of the Company but subject always to the proviso in Clause 3(1)(iv);
- (xv) to take such steps by personal or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company in the shape of donations, annual subscriptions or otherwise;
- (xvi) to print and publish any newspapers, periodicals, books or leaflets that the Company may think desirable for the promotion of its objects;
- (xvii) to purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate;
- (xviii) to transfer all or any part of the property, assets, liabilities and engagements of the Company to any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate; and
- (xix) to make donations for patriotic or charitable purposes.

3A. Liability of Members

The liability of the Members is limited.

3B. Contribution on winding up

Every Member undertakes to contribute to the property of the Company in the event of the Company being wound up while that person is a Member, or within one year after that person ceases to be a Member, for payment of the debts and liabilities of the Company (contracted before that person ceases to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding ten dollars (\$10.00).

3C. Application of property and income

The income and property of the Company however and whenever derived, will be applied solely towards the promotion of the purposes of the Company as set out in this Constitution, and no portion of the Company's income or property will be paid or

transferred, directly or indirectly by way of dividend, bonus or otherwise, to the Members, but nothing contained in this Constitution will prevent:

- (a) the payment in good faith of remuneration to any officers or servants of the Company or to any Member in return for any services rendered to the Company or for goods supplied to the Company in the ordinary course of business;
- (b) the payment of interest at a proper commercial rate on money borrowed from any Member; or
- (c) the payment of reasonable and proper rent for premises demised or let by any Member to the Company.

MEMBERSHIP

4. **Number of Members**

The number of Members must be at least five (5).

5. **Who can be a Member and register of Members**

The Members will be:

- (a) each person who is a member of the Board; and
- (b) such other natural persons as the Board admits to membership in accordance with this Constitution,

and the Secretary must keep a register of the names and addresses of all Members and the date of commencement and the date of cessation of that Member's membership of the Company.

6. **Application for Membership**

Every application for membership of the Company must be made in writing, signed by the applicant and must be in such form as the Board from time to time prescribes.

7. **Board to consider application**

At the next meeting of the Board after the receipt of any application for membership, that application must be considered by the Board, who will determine to accept or reject the application. In no case will the Board be required to give any reason for the rejection of an application.

8. **Notice of admission to Membership**

When an applicant has been accepted for membership the Secretary must promptly send to the applicant written notice of admission to membership.

CESSATION OF MEMBERSHIP

9. **Resignation of Members**

A Member may at any time by giving notice in writing to the Secretary resign as a Member but will remain liable for all moneys due by that Member to the Company and for any sum not exceeding ten dollars (\$10.00) for which that Member is liable under Clause 3B.

10. **Expulsion of Members**

If any Member refuses or neglects to comply with the provisions of this Constitution or has engaged in any conduct which in the opinion of the Board is inappropriate for a Member or prejudicial to the interests of the Company or to the interests and advancement of the cause of community broadcasting or community television the Board has the power by resolution to censure, suspend or expel the Member from the Company.

11. **Resolution for expulsion**

At least one week before the meeting of the Board at which a resolution for the expulsion of a Member is considered, the Member must be given notice:

- (a) of that meeting;
- (b) of what is alleged against the Member;
- (c) of the intended resolution for expulsion; and
- (d) that the Member will, at the meeting and before the consideration of the resolution, have the opportunity of giving orally or in writing any explanation or defence the Member may think fit.

A Member may by notice in writing lodged with the Secretary at least twenty-four (24) hours before the time at which the resolution for the Member's expulsion is to be considered by the Board, elect to have the matter of that Member's expulsion considered by the Company in general meeting. A general meeting of the Company will then be called. If at the general meeting a resolution for the expulsion of the Member is passed by a majority of two-thirds of those present and voting (such vote to be taken by ballot) the Member concerned will be expelled.

GENERAL MEETINGS

12. **Annual general meetings and general meetings**

Subject to the Law, a general meeting of the Company must be held at least once every year. Each general meeting before which the accounts of the Company are laid will be called an annual general meeting. All general meetings, other than annual general

meetings, will be called general meetings. In this Constitution, unless the context requires otherwise, "general meeting" includes annual general meeting. Each general meeting will be held at such time and place as is determined by the Board.

13. **Convening of general meetings**

A general meeting of the Company may be convened by any member of the Board at such time and place as that member of the Board thinks fit or otherwise as permitted or required by the Law.

14. **Notice of general meeting**

Subject to the provisions of the Law relating to special resolutions and consent to short notice, not less than twenty-one (21) days notice in writing of any general meeting specifying the place, the day and the hour of the meeting and in case of special business the general nature of that business must be given to Members entitled to be present at that meeting.

15. **Business of general meetings**

The business of the annual general meeting will be to receive and consider financial statements, statements and reports of the Board and the Auditor's reports, appoint the Auditor and transact any other business which under the Law or this Constitution is required to be transacted at an annual general meeting. All other business transacted at an annual general meeting or other general meeting is deemed to be special.

16. **Omission to give notice of meetings**

Subject to section 1322 of the Law, the non-receipt of a notice by or the accidental omission to give a notice of any general meeting to any Member will not invalidate any resolution passed at that meeting.

16A. **Passing a resolution without a general meeting**

The Company may pass a resolution without a general meeting being held if all Members entitled to vote on that resolution sign a document containing a statement that they are in favour of the resolution set out in the document. A resolution in those terms will be deemed to have been passed at a general meeting held on the day and time at which the document was last signed by a Member. Any such resolution may consist of several documents in like form, each signed by one (1) or more Members.

PROCEEDINGS AT GENERAL MEETINGS

17. **Quorum**

Subject to Clause 20, the quorum for a general meeting is four Members present in person or by proxy or attorney entitled to vote at that meeting.

18. **No business to proceed without quorum**

No business can be transacted at any general meeting other than an adjourned meeting under Clauses 20 or 21 except the election of a chairperson and the adjournment of the meeting, unless the requisite quorum is present at that meeting.

19. **Chairperson**

The President will preside as chairperson at every general meeting or if there is no President, or if the President is not present within fifteen (15) minutes after the time appointed for the holding of a meeting or is present but unwilling to act, the Vice-President will be the chairperson or if the Vice-President is not present or is unwilling to act then the Members present must elect one of their number to be chairperson of the meeting.

20. **Adjournment in absence of quorum**

If within half an hour from the time appointed for a general meeting a quorum is not present, the meeting, if convened upon the requisition of Members, will be dissolved but in any other case it will stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, three (3) Members present in person or by proxy or attorney will be a quorum. In any other case, the meeting will be dissolved.

21. **Adjournment**

The chairperson of a general meeting or of an adjourned meeting of it may, with the consent of any meeting at which a quorum is present (and must if so directed by the meeting), adjourn the meeting or any business, motion, question or resolution to be considered at it from time to time and from place to place, but no business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

22. **Notice of Adjournment**

It is not necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting unless a meeting is adjourned for thirty (30) days or more. If a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting must be given in the same way as it is given for an original meeting.

23. **Voting on show of hands unless poll demanded**

At every general meeting a resolution put to the vote of the meeting will be decided on a show of hands of the Members present and entitled to vote unless a poll is (before or on the declaration of the result of the show of hands) demanded -

- (a) by the chairperson of the meeting; or
- (b) by at least three (3) Members present in person or by proxy or attorney.

Unless a poll is so demanded a declaration by the chairperson of the meeting that a resolution has on a show of hands been passed or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

24. **Conduct of poll**

If a poll is demanded under Clause 23 it will be taken in such a manner and either at once or after an interval or adjournment or otherwise as the chairperson of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded. A poll demanded on the election of a chairperson for the meeting or on a question of adjournment must be taken immediately.

25. **Chairperson has casting vote**

In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded will be entitled to a second or casting vote in addition to the vote or votes to which the chairperson may be entitled as a Member or as proxy or attorney of a Member.

26. **Votes of Members**

A Member may vote in person or by proxy or by attorney and on a show of hands or poll every Member present in person or by proxy or by attorney will have one vote.

27. **Votes by trustees and proxies**

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 that Member's board or trustee or by any other person who has the management of that Member's estate, and any such board, trustee or other person may vote by proxy or attorney.

28. **Appointment of proxies**

The instrument appointing a proxy must be in writing under the hand of the appointor or of the appointer's attorney duly authorised in writing. The instrument appointing a

proxy will be deemed to confer authority to demand or join in demanding a poll. A Member will be entitled to instruct that Member's proxy to vote in favour of or against all or any proposed resolutions. Unless otherwise instructed the proxy may vote as the proxy thinks fit.

29. **Instrument appointing proxy**

The instrument appointing a proxy may be in the following form or in a common or usual form.

COMMUNITY BROADCASTING FOUNDATION LIMITED

I,
of
being a Member of Community Broadcasting Foundation Limited hereby appoint

of
or failing him/her
of
as my proxy to vote on my behalf at the annual general meeting/general meeting (as the case may be) of the Company, to be held on the
day of
and at any adjournment of that meeting.

My proxy is hereby authorised to vote *in favour of/*against the following resolutions.

(Note - in event of the Member desiring to vote for or against any resolution that Member must instruct their proxy accordingly. Unless otherwise instructed, the proxy may vote as the proxy thinks fit.

* Strike out whichever is not desired).

Signed this day of

30. **Proof of appointment of proxy**

The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or proof of that power or authority to the satisfaction of the

Board must be deposited at the registered office of the Company (or at such other place or places as the Board may determine from time to time) prior to 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, prior to the time appointed for the taking of the poll and in default the instrument of proxy will not be treated as valid.

31. **Proof of appointment of attorney**

Any Member entitled to vote at a general meeting of the Company may, by duly executed power of attorney, appoint an attorney to act on behalf of that Member at that meeting. The instrument appointing an attorney must be in writing and the power of attorney or proof of it to the satisfaction of the Board must be deposited at the registered office of the Company (or at such other place or places as the Board may determine from time to time) together with such evidence of the due execution of it as the Board may require, before the attorney will be entitled to act under it and the attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

32. **Vote by proxy or attorney valid unless notice of revocation received by Company**

A vote given in accordance with the terms of an instrument of proxy or attorney will be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed if no intimation in writing of such death, unsoundness of mind or revocation has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is issued.

THE BOARD

33. **Number of members of the Board**

The number of members of the Board will not be less than five (5) nor more than ten (10).

34. **Board members must be Members**

- (a) A member of the Board must be a Member of the Company.
- (b) Each person who is appointed to the Board will become a Member of the Company immediately upon being appointed to the Board and will be deemed to have applied for and been admitted as a Member of the Company in accordance with Clauses 6, 7 and 8.
- (c) Each person who is a member of the Board will cease to be a Member of the Company immediately upon the expiration of that person's appointment to

the Board (for any reason) and will be deemed to have resigned as a Member in accordance with Clause 9.

- (d) A person who ceases to be a Member of the Company upon ceasing to be a member of the Board will not be prevented from applying to be admitted as a Member of the Company in accordance with Clause 6.

35. **Composition of the Board**

- (a) The Board will comprise:
 - (i) a President appointed in accordance with Clause 36;
 - (ii) a Vice-President appointed in accordance with Clause 39;
 - (iii) a Treasurer appointed in accordance with Clause 39;
 - (iv) a nominee of the General Grants Advisory Committee appointed in accordance with Clause 38;
 - (v) a nominee of the Ethnic Grants Advisory Committee appointed in accordance with Clause 38;
 - (vi) a nominee of the Indigenous Grants Advisory Committee appointed in accordance with Clause 38;
 - (vii) a nominee of the Print Handicapped Grants Advisory Committee appointed in accordance with Clause 38.
- (b) In addition to the Board appointments set out in Clause 35(a), the Board may, by resolution, appoint as a member of the Board any one (1) or more of:
 - (i) the Executive Director for the time being of the Company; and/or
 - (ii) any other person or persons the Board sees fit to appoint provided the number of members of the Board does not exceed the number set out in Clause 33.
- (c) Nothing in this Constitution will prevent the Board, at its discretion, from allowing any Additional Grants Advisory Committee to nominate any person to be on the Board in accordance with this Constitution as if that Additional Grants Advisory Committee was included in the definition of Original Grants Advisory Committee in this Constitution.

36. **Appointment of President**

- (a) The President will be nominated by the National Committee by notice in writing under the hand of the president or other officer of the Community Broadcasting Association of Australia directed to the Secretary.

- (b) The Board must, at the Board meeting immediately following receipt of the nomination, accept or not accept the nominee.
 - (c) If the Board does not accept the nominee, the Board must notify the National Committee and the National Committee must nominate another person to be President in the manner set out in Clause 36(a) and the Board must accept or not accept the nominee as set out in Clause 36(b). This process will continue until the Board accepts a nominee of the National Committee.
 - (d) If the Board accepts a nominee of the National Committee, that person will be deemed to have been appointed by the Board as President from the date on which the nomination is accepted by the Board and will become a member of the Board from that time.
37. Deleted.
38. **Appointment of Original Grants Advisory Committee nominees**
- (a) Each Original Grants Advisory Committee must nominate one of its members to be a member of the Board. Each Original Grants Advisory Committee must notify the Secretary of the Company of that Original Grants Advisory Committee's nominee to the Board and of the recommended term of that nominee's appointment to the Board (which must not be more than three (3) years).
 - (b) At the next Board meeting following the receipt by the Secretary of notice of an Original Grants Advisory Committee's nominee, the Board will consider whether or not to accept that nominee to the Board.
 - (c) If the Board accepts the nominee, that nominee will be deemed to be appointed by the Board from the date on which the nomination is accepted by the Board and will become a member of the Board from that time. If the Board does not accept the nominee the Board must notify the Original Grants Advisory Committee which nominated that nominee and request that Original Grants Advisory Committee to nominate another person to be appointed to the Board of the Company.
 - (d) The process set out in Clause 38(a)-(c) will continue until the Board accepts a nominee of the Original Grants Advisory Committee.

39. **Appointment of Vice-President and Treasurer**

The Board must elect a Vice-President and a Treasurer in accordance with the following:

- (a) any two (2) members of the Board must nominate a person (who must be an existing member of the Board) to be the Treasurer;
- (b) any two (2) members of the Board must nominate a person (who may but need not be an existing member of the Board) to be the Vice-President;
- (c) each nomination for the Treasurer and the Vice-President must be in writing and signed by the nominee and by their proposer and seconder and must be lodged with the Secretary at or before the Board meeting at which the election takes place;
- (d) the Board must consider and, by resolution, elect or refuse to elect the person nominated as Treasurer or Vice-President (as the case may be); and
- (e) if the person nominated as Treasurer or Vice-President (as the case may be) is not elected, the Board must appoint another person or persons (as the case may be) in accordance with paragraphs (a) to (d) of this Clause 39.

40. **Prohibition on payment of fees to Board members**

- (a) Board members will not be entitled to and the Company must not pay a member of the Board any remuneration or any other financial benefit in connection with the Board member's position as a member of the Board.
- (b) Notwithstanding Clause 40(a), the Company may make payments to members of the Board in the following circumstances:
 - (i) for the payment of out of pocket expenses incurred in carrying out the duties of a member of the Board where the payments do not exceed an amount previously approved by the Board;
 - (ii) for any service rendered to the Company in a professional or technical capacity where the provision of that service has the prior approval of the Board and the amount payable is approved by resolution of the Board and is on reasonable commercial terms; or
 - (iii) as an employee of the Company where the terms of employment have been approved by a resolution of the Board.

41. **Company auditor may not act as Board member**

No person may be appointed as a member of the Board if the appointment of that person would result in a person who or a firm which is then an auditor of the Company becoming prohibited under the Law from acting as an auditor of the Company.

42. **Board members may contract with Company**

Subject to Clause 43, a member of the Board is not disqualified by the office of member of the Board from contracting or entering into any arrangement with the Company either as vendor, purchaser or otherwise and no contract or arrangement entered into with the Company by a Board member nor any contract or arrangement entered into by or on behalf of the Company in which a Board member is in any way interested may be avoided for that reason. A Board member is not liable to account to the Company for any profit realised by any contract or arrangement by reason of holding the office of Board member or of the fiduciary relationship established by that office.

43. **Material personal interests of Board members**

- (a) A member of the Board who has a material personal interest in a matter that is to be considered at a meeting of the Board:
 - (i) must not vote on the matter or be present while the matter is being considered at the meeting; and
 - (ii) must not be counted in a quorum in relation to that matter.
- (b) For the purpose of Clause 43(a) a member of the Board is not taken to have a material personal interest in a matter where the Board member has no interest other than as a Member and in common with the other Members.
- (c) The quorum for consideration at a meeting of the Board of a matter in which one or more members of the Board have a material personal interest is two (2) members of the Board who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.
- (d) Each member of the Board must disclose to the Company any material contract in which the Board member is interested, and must provide the Company with the names of the parties to the contract, particulars of the contract, and the Board member's interest in the contract.
- (e) A Board member's failure to make disclosure under this Clause 43 does not render void or voidable a contract in which the Board member has an interest.

- (f) A member of the Board may not attest the affixing of the Seal to any document relating to a contract or arrangement or proposed contract or arrangement in which the member of the Board has an interest.

44. **Board members may hold other office**

- (a) A Board member may hold any other office or position under the Company (except that of auditor) in conjunction with the office of Board member on terms and at remuneration as the Board approves.
- (b) A Board member may be or become a director or hold any other office or position under any corporation promoted by the Company or in which the Company may be interested in any capacity, and the Board member is not accountable to the Company for any benefits received as a director or shareholder of or holder of any other office or position in that corporation.

45. **Board members and Members may lend to the Company**

Any member of the Board or any Member of the Company may lend money to the Company at an interest rate not exceeding the lowest rate for the time being paid by banks in the Territory in respect of term deposits.

ALTERNATE DIRECTORS

46. **Board member may appoint alternate**

- (a) Subject to the Law and to Clauses 41 and 46(b):
- (i) any Original Grants Advisory Committee nominee on the Board may recommend to the Board in writing any person who is approved by the Original Grants Advisory Committee which nominated that nominee;
- (ii) each Board member and each Original Grants Advisory Committee nominee may recommend in writing any person, to act as an alternate in that Board member's place, whether for a stated period or periods or until the happening of a specified event or from time to time, whenever by absence or illness or otherwise that Board member is unable to attend to their duties as a member of the Board, and, if that recommendation is accepted by the Board, the person recommended will be appointed to act as the recommending Board member's alternate.

- (b) Alternates appointed under Clause 46(a):
- (i) may be removed or suspended from office by notice in writing given to the Secretary by the Board member represented by the alternate;
 - (ii) are entitled to attend meetings of the Board and to vote at them if the Board member represented by the alternate is not present;
 - (iii) are entitled to exercise all the powers (except the power to appoint an alternate) and perform all the duties of a Board member, insofar as the Board member represented by the alternate has not exercised or performed them;
 - (iv) will automatically cease to be an alternate if the Board member represented by the alternate vacates office or dies; and
 - (v) while acting as Board member, are responsible to the Company for their own acts and defaults and are deemed not to be the agent of the Board member represented by the alternate.

TERM OF OFFICE OF BOARD MEMBERS AND CASUAL VACANCIES

47. **Term of office of Board members**

Subject to Clause 48:

- (a) a person who is appointed President of the Board will remain a member of the Board for the period (not to exceed three (3) years) specified by the Board at the time the appointment is made by the Board pursuant to Clause 36(d) or, if no such period is specified by the Board, for a period of three (3) years from the date of appointment pursuant to Clause 36(d);
- (b) if the Treasurer ceases to be a member of the Board for any reason, that person must also cease to be Treasurer;
- (c) if the Executive Director of the Company is appointed to the Board under Clause 35(b), that person will cease to be a member of the Board upon ceasing to be Executive Director of the Company;
- (d) an Original Grants Advisory Committee nominee to the Board will remain a member of the Board for the period (not to exceed three (3) years) specified by the Board at the time the appointment is made by the Board pursuant to Clause 38(c) (which may but need not be the term recommended by the Original Grants Advisory Committee pursuant to Clause 38(a)) or, if no such period is specified by the Board, for a period of three (3) years from

the date of appointment pursuant to Clause 38(c), and an Original Grants Advisory Committee nominee cannot be removed earlier by the Original Grants Advisory Committee which nominated that nominee;

- (e) a member of the Board who is not referred to in paragraphs (a) to (d) of this Clause 47 will remain a member of the Board for the period (not to exceed three (3) years) specified by the Board at the time that member of the Board is appointed or, if no such period is specified by the Board, for a period of three (3) years from the date of that member's appointment to the Board; and
- (f) members of the Board referred to in paragraphs (d) and (e) of this Clause 47 will, at the end of their initial and any subsequent appointment, be eligible for re-appointment in accordance with these Articles.

48. **Vacation of office of Board members and casual vacancies**

- (a) The office of a member of the Board will become vacant if that member of the Board:
 - (i) becomes an insolvent under administration or suspends payment generally to that member's creditors;
 - (ii) ceases to be a member of the Board by operation of Section 224 of the Law;
 - (iii) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (iv) resigns office by notice in writing to the Company;
 - (v) is absent for more than six (6) months without permission of the Board from meetings of the Board held during that period; or
 - (vi) ceases to be a Member of the Company.
- (b) If a casual vacancy arises on the Board for any reason:
 - (i) the Board will have the power to appoint a new member of the Board to fill the casual vacancy;
 - (ii) the Board may, in its discretion, seek recommendations for a person to fill the casual vacancy from the body which originally recommended or nominated the Board member whose office has been vacated; and
 - (iii) any member of the Board so appointed to fill a casual vacancy will hold office for the remainder of the term of the Board

member whose office has been vacated and will then be eligible

for re-election subject to and in accordance with this Constitution.

- (c) If the term of a Board member's appointment expires pursuant to Clause 47 and no replacement has yet been appointed to fill that position in accordance with Clauses 36, 38 or 39 (as the case may be) the Board may, with the prior approval of the body which is responsible for appointing or nominating a replacement for the Board member whose term of office has expired:
- (i) appoint a new member of the Board to fill the vacancy; or
 - (ii) extend the term of the Board member whose term has expired, for the period until a replacement is appointed to the vacant position in accordance with this Constitution.

POWERS AND DUTIES OF THE BOARD

49. **General powers of the Board**

The management and control of the business and affairs of the Company is vested in the Board which can exercise all powers and do all acts and things which are not, by the Law or by this Constitution, required to be exercised by the Company in general meeting, subject, nevertheless, to this Constitution, to the provisions of the Law, and to regulations, being not inconsistent with this Constitution or the Law, as may be made by the Company in general meeting, provided that:

- (a) no resolution or regulation made by the Company in general meeting will invalidate any prior act of the Board which would have been valid if that resolution or regulation had not been passed or made;
- (b) any sale of the Company's main undertaking will only be made subject to the approval or ratification of that sale by the Company in general meeting; and
- (c) the Company must not make or give to any member of the Board or other prescribed person (within the meaning of Section 237 of the Law) any payment or other valuable consideration or benefit in connection with the transfer of the whole or any part of the undertaking or property of the Company unless particulars with respect to the proposed payment or consideration (including the amount of the proposed payment or the money value of the proposed consideration or the proposed other benefit) have been disclosed to the Members and the making of the proposed payment (as disclosed), or the giving of the proposed consideration or proposed other

benefit (as disclosed), has been approved by the Company in general meeting.

50. **Power of Board to borrow money and grant security**

Without limiting the generality of Clause 49, 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.

51. **Execution of negotiable instruments**

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two (2) members of the Board or in such other manner as the Board from time to time determines.

PROCEEDINGS OF THE BOARD

52. **Convening of Board meetings**

The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A member of the Board may at any time and the Secretary must on the requisition of a member of the Board summon a meeting of the Board. Notice in writing of a meeting of the Board must be given to each Board member at their usual place of residence.

53. **Votes at Board meetings**

Subject to this Constitution questions arising at any meeting of the Board will be decided by the majority of votes and a determination by a majority of the members of the Board will for all purposes be deemed a determination of the Board. In case of an equality of votes the Chairperson of the meeting will have a second or casting vote.

54. **Quorum**

Subject to Clause 43(c), the quorum necessary for the transaction of the business of the Board will be a majority of the total Board as provided in Clause 35 or such greater number as may be fixed by the Board.

55. **Continuing members of Board to act in certain circumstances**

The continuing members of the Board may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the necessary quorum of the Board, the continuing member or members of the Board may act for the purpose of increasing the number of

members of the Board to that number or of summoning a general meeting of the Company, but for no other purpose.

56. **Chairperson**

The President will preside as chairperson at every meeting of the Board, or if there is no President, or if at any meeting the President is not present within ten (10) minutes after the time appointed for holding the meeting, the Vice-President will be chairperson or if the Vice-President is not present at the meeting then the members of the Board may choose one (1) of their number to be chairperson of the meeting.

57. **Delegation to committees**

The Board may 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 one (1) or more committees consisting of such member or members of the Board or Members of the Company or such other persons as the Board thinks fit. Any committee so formed must conform to any regulation that may be imposed by the Board and subject to such regulation will have power to co-opt any Member or Members of the Company and all members of such committee will have one (1) vote.

58. **Minutes**

The Board must cause minutes to be made -

- (a) of all appointments of officers and servants;
- (b) of names of members of the Board present at all meetings of the Company and of the Board; and
- (c) of all proceedings at all meetings of the Company and of the Board.

Such minutes must be signed by the chairperson of the meeting at which the proceedings were held or by the chairperson of the next succeeding meeting.

59. **Resolution may consist of several documents**

A resolution in writing signed by all members of the Board in Australia for the time being entitled to receive notice of a meeting of the Board, will be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more members of the Board. A facsimile or other document produced by mechanical or electronic means and bearing a signature of a member of the Board is deemed to be a resolution in writing signed by that member of the Board.

60. **Board meeting by audio or audio-visual facilities**

Without limiting the discretion of the Board to regulate its meetings under Clause 52, the Board may if it thinks fit confer by telephone, closed circuit television or other electronic means of audio or audio-visual communication, and a resolution passed by such a conference will, notwithstanding the Board members present together in one place at the same time, be deemed to have been passed at a meeting of the Board held on the day on which and at the time at which the conference was held. The provisions of this Constitution relating to proceedings of the Board apply so far as they are capable of application to such conferences.

61. **Validity of acts of Board and Committee**

All acts done by any meeting of the Board or of a committee formed in accordance with Clause 57 or by any person acting as a member of the Board will, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such member of the Board or committee, or that the members of the Board or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the Board or the committee (as the case may be).

ADVISORY COMMITTEES

62. **Advisory Committees**

The Board may consult with and seek advice and/or recommendations (which need not be accepted by the Board) in relation to the allocation of monies, the making of grants and loans in accordance with the objects of the Company and other matters relating to the affairs of the Company from:

- (a) the General Grants Advisory Committee, appointed by the Board from persons nominated by the Community Broadcasting Association of Australia at its annual general meeting;
- (b) the Ethnic Grants Advisory Committee, appointed by the Board from persons nominated by the National Ethnic and Multicultural Broadcasters Council at its annual general meeting;
- (c) the Indigenous Grants Advisory Committee, appointed by the Board from persons nominated by the Indigenous organisation which in the opinion of the Board best represents the interests of Indigenous community broadcasters;
- (d) the Print Handicapped Grants Advisory Committee, appointed by the Board from persons nominated by the Australian Council for Radio for the Print

Handicapped Limited at its annual general meeting; and

- (e) any other special interest grants advisory committee appointed by the Board and comprised of persons-which in the opinion of the Board represents the interests of community broadcasters serving that special interest.

62A. Number of members of an Advisory Committee

The number of members appointed to any Advisory Committee pursuant to Clause 62 will not be less than three (3).

62B. Prohibition on payment of fees to Advisory Committee members

- (a) Advisory Committee members will not be entitled to and the Company must not pay a member of an Advisory Committee any remuneration or any other financial benefit in connection with the Advisory Committee member's position as a member of an Advisory Committee.
- (b) Notwithstanding Clause 62B(a), the Company may make payments to members of an Advisory Committee in the following circumstances:
 - (i) for the payment of out of pocket expenses incurred in carrying out the duties of a member of an Advisory Committee where the payments do not exceed an amount previously approved by the Board;
 - (ii) for any service rendered to the Company in a professional or technical capacity where the provision of that service has the prior approval of the Board and the amount payable is approved by resolution of the Board and is on reasonable commercial terms; or
 - (iii) as an employee of the Company where the terms of employment have been approved by a resolution of the Board.

62C. Term of office of Advisory Committee members

Subject to Clause 63:

- (a) a member of an Advisory Committee will remain a member of that Advisory Committee for the period (not to exceed three (3) years) specified by the Board at the time that member is appointed or, if no such period is specified by the Board, for a period of three (3) years from the date of that member's appointment to the Advisory Committee; and
- (b) Advisory Committee members will, at the end of their initial and any subsequent appointment, be eligible for re-appointment in accordance with this Constitution.

63. **Vacation of office of Advisory Committee members and casual vacancies**

- (a) The office of an Advisory Committee member will become vacant if that member:
 - (i) becomes an insolvent under administration or suspends payment generally to that member's creditors;
 - (ii) dies;
 - (iii) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (iv) resigns office by notice in writing to the Secretary; or
 - (v) is absent for a period of more than six (6) months without the permission of the Board from meetings of the Advisory Committee held during that period.
- (b) If an Advisory Committee member has been appointed under Clause 62(a), (b), (c) or (d), the body which originally nominated that Advisory Committee member may, at any time, recommend that the member be removed from the Advisory Committee by notice in writing addressed to the Secretary and signed by the president or any other officer of the nominating body. If a nominating body recommends the removal of a person from an Advisory Committee associated with that nominating body, the Board may, but will not be required to, accept that recommendation.
- (bb) If an Advisory Committee member has been appointed by the Board under Clause 62, that Advisory Committee member may, at any time, be removed from the Advisory Committee by a resolution of the Board.
- (c) If a casual vacancy arises on an Advisory Committee, the members of which have been appointed pursuant to Clause 62(a), (b), (c) or (d), for any reason:
 - (i) the Board will have the power to appoint a new member of the Advisory Committee to fill the casual vacancy from persons nominated by the body which originally nominated the Advisory Committee member whose office has been vacated; and
 - (ii) any Advisory Committee member so appointed to fill a casual vacancy will hold office for the remainder of the term of the member whose office has been vacated and will then be eligible

for re-appointment subject to and in accordance with this Constitution.

- (d) If a casual vacancy arises on an Advisory Committee, the members of which have been appointed pursuant to Clause 62(e), for any reason:
- (i) the Board will have the power to appoint a new member of the Advisory Committee to fill the casual vacancy, being a person who in the opinion of the Board represents the interests of the community broadcasters serving the special interest to which that Advisory Committee relates; and
 - (ii) any Advisory Committee member so appointed to fill a casual vacancy will hold office for the remainder of the term of the member whose office has been vacated and will then be eligible for re-appointment subject to and in accordance with this Constitution.

64. **Advisory Committee Proceedings**

Subject to this Constitution and any directions that may be given by the Board or the Company in general meeting, an Advisory Committee may appoint its own chairperson and other officers and regulate its affairs in such manner as it sees fit. Each Advisory Committee must meet and adjourn as requested by the Board and otherwise as the Advisory Committee thinks proper. Questions arising at any meeting of an Advisory Committee will be determined by a majority of votes of the members present, and in the case of any equality of votes the chairperson of that meeting will have a second or casting vote.

64A. **Alternate Advisory Committee Members**

- (a) The body that originally nominated an Advisory Committee member under Clause 62(a), (b), (c) or (d) may recommend in writing to the Board that another person act as an alternate in that Advisory Committee member's place, whether for a stated period or periods or until the happening of a specified event or from time to time, whenever by absence or illness or otherwise that Advisory Committee member is unable to attend to their duties as a member of that Advisory Committee, and, if that recommendation is accepted by the Board, the person recommended will be appointed as the Advisory Committee member's alternate.
- (b) If an Advisory Committee member is appointed under Clause 62(e), the Board may appoint in writing any person who, in the opinion of the Board, represents the interests of community broadcasters serving the special

interests to which that Advisory Committee relates, to act as an alternate in that Advisory Committee member's place, whether for a stated period or periods or until the happening of a specified event or from time to time, whenever by absence or illness or otherwise that Advisory Committee member is unable to attend to their duties as a member of that Advisory Committee.

- (c) An Alternate Advisory Committee member:
- (i) appointed under Clause 64A(a) may be removed or suspended from office by notice in writing given to the Secretary of the Board by the body that originally nominated the Advisory Committee member represented by the alternate;
 - (ii) appointed under Clause 64A(b) may be removed or suspended from office by a resolution of the Board;
 - (iii) will be entitled to attend meetings of the Advisory Committee and to vote at them if the Advisory Committee member represented by the alternate is not present;
 - (iv) will automatically cease to be an alternate if the Advisory Committee member represented by the alternate vacates office or dies; and
 - (v) while acting as an Advisory Committee member, will be responsible to the Company, the Board and the Advisory Committee for his/her own acts and defaults and will be deemed not to be the agent of the Advisory Committee member represented by the alternate.

64B. Validity of acts of Advisory Committees

All acts done by any meeting of an Advisory Committee formed in accordance with Clause 62 or by any person acting as an Advisory Committee member will, notwithstanding that it is afterwards discovered that there was some defect in the appointment of such member of the Advisory Committee, or that the members of the Advisory Committee or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the Advisory Committee.

64C. **Material personal interests of Advisory Committee members**

- (a) A member of the Advisory Committee who has a material personal interest in a matter that is to be considered at a meeting of the Committee:
 - (i) must not vote on the matter or be present while the matter is being considered at the meeting; and
 - (ii) must not be counted in a quorum in relation to that matter.
- (b) For the purpose of Clause 64C(a) a member of the Advisory Committee is not taken to have a material personal interest in a matter where the Committee member has no interest other than as a Member and in common with the other Members.
- (c) The quorum for consideration at a meeting of the Advisory Committee of a matter in which one or more members of the Committee have a material personal interest is two (2) members of the Committee who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.
- (d) Each member of the Advisory Committee must disclose to the Committee any material contract in which the Committee member is interested, and must provide the Committee with the names of the parties to the contract, particulars of the contract, and the Committee member's interest in the contract.
- (e) An Advisory Committee member's failure to make disclosure under this Clause 64C does not render void or voidable a contract in which the Committee member has an interest.

SECRETARY

65. **Board to appoint Secretary**

The Secretary will in accordance with the Law be appointed by the Board for such term and on such conditions as the Board thinks fit. Any secretary appointed by the Board may be removed by the Board.

SEAL

66. **Custody and use of seal**

The Board must provide for the safe custody of the seal which must only be used by the authority of the Board or of a committee of members of the Board authorised by the Board to use the seal, and every instrument to which the seal is affixed must be signed by a member of the Board and countersigned by the Secretary or by a second member of the Board or by some other person appointed by the Board for that purpose.

67. **Accounts must comply with the Law**

The Company must comply with the Law with respect to accounts, annual returns and accounting records.

68. **Inspection of records**

The Board will from time to time (subject to the provisions of the Law) determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company shall be open to the inspection of Members.

AUDIT

69. **Audit must comply with the Law**

The Company must observe the provisions of the Law in relation to the auditing of accounts and the appointment and removal of an auditor or auditors.

NOTICE

70. **Notice to Address for Service**

Any notice to a Member must be hand delivered, sent by ordinary prepaid post or by facsimile or electronic transmission to that Member's Address for Service.

71. **Time at which notice served**

A notice will be deemed to be served:

- (a) if hand delivered, at the time of delivery;
- (b) if sent by ordinary prepaid post, two (2) business days after the notice was sent;
- (c) if sent by facsimile, at the time recorded by the Company's facsimile machine as the time of successful transmission; or
- (d) if sent by electronic means, on the business day after it was sent.

72. **Notice of general meetings**

(1) Notice of every general meeting must be given in the manner set out in Clauses 70 and 71 to:

- (a) every Member except those Members who (having an Address for Service outside Australia) have not supplied to the Company an address within Australia for the giving of notices to them; and
 - (b) the auditor or auditors for the time being of the Company.
- (2) No other person will be entitled to receive notices of general meetings.

73. **Dissolution**

The Company must not be dissolved except at a general meeting of the Company specially convened for the purpose by the majority of four fifths of the votes recorded in respect of the same. If upon the winding-up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever, that property must not be paid to or distributed among the Members, but must be given or transferred to some other institution or institutions:

- (a) having purposes similar to or compatible with the purposes of the Company;
- (b) the constitution of which prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of Clause 3C; and
- (c) which is or are eligible for tax deductibility of donations under the Income Tax Assessment Act 1936,

such institution or institutions to be determined by the Members at or before the time of the dissolution and in default of determination by the Members, by the Supreme Court of the Australian Capital Territory or such other court which may have or acquires jurisdiction in this matter.

INDEMNITY

74. **Indemnity of Company's officers**

- (a) In this Clause 74, "officer" means:
 - (i) a member of the Board, Secretary or executive officer of the Company;
 - (ii) a receiver, or a receiver and manager, of property of the Company;
 - (iii) an administrator of the Company;
 - (iv) an administrator of a deed of company arrangement executed by the Company;
 - (v) a liquidator of the Company; or
 - (vi) a trustee or other person administering a compromise or arrangement made between the Company or another person or other persons.

- (b) The Company hereby indemnifies each officer and auditor of the Company

from and against any liability incurred by that person as an officer or auditor of the Company to the extent that that liability:

- (i) is to a person other than the Company or a related body corporate and does not arise out of conduct involving a lack of good faith;
or
- (ii) is for costs and expenses incurred by that officer or auditor either in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted, or in connection with an application in relation to such proceedings in which the court grants relief to the person under the Corporations Law.

(c) Notwithstanding any other term of this Constitution, the Company may pay insurance premiums in respect of any contract insuring any officer or auditor of the Company in respect of any liability other than a liability arising out of:

- (i) conduct involving a wilful breach of duty in relation to the Company; or
- (ii) improper use of:
 - A. information acquired by virtue of the position of that officer or auditor as an officer or auditor of the Company; or
 - B. the position of that officer or auditor as an officer or auditor of the Companyto gain directly or indirectly an advantage for that officer or auditor or for any other person or to cause detriment to the Company

unless that liability is for costs and expenses incurred by that officer or auditor in defending proceedings, whether civil or criminal and whatever the outcome of those proceedings.