

CONSTITUTION OF CHILDREN'S BOOK COUNCIL OF AUSTRALIA NSW BRANCH INC.

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Part 1 Preliminary

1 Name, Definitions and Aim

1(a) Name

The name of the organisation shall be The Children's Book Council of Australia NSW Branch Inc. The abbreviated name is CBCA NSW Branch Inc. For the purposes of this document, it will also be referred to as 'the association'.

1(b) Definitions

(1) In this constitution: the committee is the governing body

ordinary committee member means a member of the committee who is not an office-bearer of the association.

secretary means:

- (a) the person holding office under this constitution as secretary of the association, or
- (b) if no person holds that office - the public officer of the association.

special general meeting means a general meeting of the association other than an annual general meeting.

the Act means the [Associations Incorporation Act 2009](#).

the Regulation means the [Associations Incorporation Regulation 2016](#).

(2) In this constitution:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

(3) The provisions of the [Interpretation Act 1987](#) apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act.

1(c) Aim

To enrich young lives through Australian stories.

Part 2 Membership

2 Membership generally

1. There are 4 categories of membership
Personal, institutional, concessional and life members
 - (2) A person is eligible to be a member of the association if:
 - (a) the person is a natural person, and
 - (b) the person has applied and been approved for membership of the association in accordance with clause 3.
 - (3) A person is taken to be a member of the association if the person was one of the individuals on whose behalf an application for registration of the association under section 6 (1) (a) of the Act was made.
 - (4) Institutional members ie schools, publishers,
 - (5) Institutions must nominate one natural person as their representative.
 - (6) All members have one equal vote.
 - (7) The committee reserves the right to refuse a member application.

3 Application for membership

- (1) All persons and organisations that support the aim of the association are eligible for membership.
- (2) Membership will be by annual subscription for the calendar year.
- (3) This association may from time to time offer at the annual general meeting Honorary Life Membership to any member of the association for outstanding service to the association and or children's literature and who is nominated by any two financial members of the association. The committee may limit the number of Life Members.
- (4) An application by a person for membership of the association:
 - (a) must be lodged (including by electronic means) with the secretary of the Association.
 - (5) The association must, on payment by the applicant, enter or cause to be entered the applicant's name in the register of members and, on the name being so entered, the applicant becomes a member of the association.
 - (6) A register of members must be compiled as per charity regulations by the association.

4 Cessation of membership

- A person ceases to be a member of the association if the person:
- (a) dies, or

- (b) resigns membership, or
- (c) is expelled from the association, or
- (d) fails to pay the annual membership fee within 3 months after the fee is due.
- (e) if an institution is wound up.

5 Membership entitlements not transferable

A right, privilege or obligation which a person has by reason of being a member of the association:

- (a) is not capable of being transferred or transmitted to another person or institution, and
- (b) terminates on cessation of the person's membership.

6 Resignation of membership

- (1) A member of the association may resign from membership of the association by first giving to the association written notice.
- (2) If a member of the association ceases to be a member under subclause (1), and in every other case where a member ceases to hold membership, the committee must make an appropriate entry in the register of members recording the date on which the member ceased to be a member.

7 Register of members

- (1) The committee must establish and maintain a register of members of the association (whether in written or electronic form) specifying the name and postal, residential or email address of each person who is a member of the association together with the date on which the person became a member.
- (2) The register of members must be kept in New South Wales:
 - (a) at the main premises of the association, or
 - (b) if the association has no premises, at the association's official address.
- (3) The register of members must be open for inspection, free of charge, by any member of the association at any reasonable hour.
- (4) A member of the association may obtain a copy of any part of the register on payment of a fee of not more than \$1 for each page copied.
- (5) If a member requests that any information contained on the register about the member (other than the member's name) not be available for inspection, that information must not be made available for inspection.
- (6) A member must not use information about a person obtained from the register to contact or send material to the person, other than for:

- (a) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the association or other material relating to the association, or
 - (b) any other purpose necessary to comply with a requirement of the Act or the Regulation.
- (7) If the register of members is kept in electronic form:
- (a) it must be convertible into hard copy, and
 - (b) the requirements in subclauses (2) and (3) apply as if a reference to the register of members is a reference to a current hard copy of the register of members.

8 Fees and subscriptions

A member of the association must pay an amount determined by the committee as an annual subscription on or before the date of admission to membership.

9 Members' liabilities

The liability of a member of the association to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association is limited to the amount, if any, unpaid by the member in respect of membership of the association as required by clause 8.

10 Resolution of disputes

- (1) A dispute between a member and another member (in their capacity as members) of the association, or a dispute between a member or members and the association, are to be referred to a Community Justice Centre for mediation under the *Community Justice Centres Act 1983*.
- (2) If a dispute is not resolved by mediation within 3 months of the referral to a Community Justice Centre, the dispute is to be referred to arbitration.
- (3) The *Commercial Arbitration Act 2010* applies to a dispute referred to arbitration.

11 Disciplining of members

- (1) A complaint may be made to the committee by any person that a member of the association:
 - (a) has refused or neglected to comply with a provision or provisions of this constitution, or
 - (b) has wilfully acted in a manner prejudicial to the interests of the association.
- (2) The committee may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (3) If the committee decides to deal with the complaint, the committee:

- (a) must cause notice of the complaint to be served on the member concerned, and
 - (b) must give the member at least 14 days from the time the notice is served within which to make submissions to the committee in connection with the complaint, and
 - (c) must take into consideration any submissions made by the member in connection with the complaint.
- (4) The committee may, by resolution, expel the member from the association or suspend the member from membership of the association if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.
- (5) If the committee expels or suspends a member, the secretary must, within 7 days after the action is taken, cause written notice to be given to the member of the action taken, of the reasons given by the committee for having taken that action and of the member's right of appeal under clause 12.
- (6) The expulsion or suspension does not take effect:
- (a) until the expiration of the period within which the member is entitled to appeal against the resolution concerned, or
 - (b) if within that period the member exercises the right of appeal, unless and until the association confirms the resolution under clause 12,
- whichever is the later.

12 Right of appeal of disciplined member

- (1) A member may appeal to the association in general meeting against a resolution of the committee under clause 11, within 7 days after notice of the resolution is served on the member, by lodging with the office manager a notice to that effect.
- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) On receipt of a notice from a member under subclause (1), the association must notify the committee, which is to convene a general meeting of the association to be held within 28 days after the date on which the association received the notice.
- (4) At a general meeting of the association convened under subclause (3):
- (a) no business other than the question of the appeal is to be transacted, and
 - (b) the committee and the member must be given the opportunity to state their respective cases orally or in writing, or both, and
 - (c) the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (5) The appeal is to be determined by a simple majority of votes cast by members of the association.

Part 3 The committee

13 Powers of the committee

Subject to the Act, the Regulation, this constitution and any resolution passed by the association in general meeting, the committee is to control and manage the affairs of the association.

14 Composition and membership of committee

(1) The committee is to consist of:

- (a) the office-bearers of the association, and
- (b) at least 3 ordinary committee members or more as necessary,

each of whom is to be elected at the annual general meeting or any committee meeting of the association under clause 15.

Note. Section 28 of the Act contains further requirements concerning eligibility for membership and composition of the committee.

(2) The total number of committee members is to be no more than 16.

(3) The office-bearers of the association are as follows:

- (a) the president,
- (b) the vice-president,
- (c) the treasurer,
- (d) the secretary,

The public officer can be the secretary or a committee member.

The CBCA NSW Branch Inc. Committee will appoint the Member Director to the national CBCA Board every three years according to the CBCA Constitution.

(4) A committee member may hold up to 2 offices (other than both the offices of president and vice-president).

(5) The position of president may be held by any one person for no longer than 3 consecutive years. There is no maximum time limit for other office-bearers of the committee.

Note. Schedule 1 to the Act provides that an association's constitution is to address the maximum number of consecutive terms of office of any office-bearers on the committee.

(6) Each member of the committee is, subject to this constitution, to hold office until immediately before the election of committee members at the annual general meeting next following the date of the member's election and is eligible for re-election.

(7) A person nominated as a candidate for election as an office-bearer or as an ordinary committee member of the association must be a member of the association.

15 Election of committee members

- (1) Nominations of candidates for election as office-bearers of the association or as ordinary committee members:
 - (a) must be made in writing, signed by 2 members of the association and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination), and (may take electronic form)
 - (b) must be delivered to the secretary of the association before the holding of the annual general meeting at which the election is to take place.
- (2) If insufficient nominations are received to fill all vacancies on the committee, the candidates nominated are taken to be elected and further nominations are to be received at the annual general meeting.
- (3) If insufficient further nominations are received, any vacant positions remaining on the committee are taken to be casual vacancies.
- (4) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (5) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (6) The ballot for the election of office-bearers and ordinary committee members of the committee is to be conducted at the annual general meeting in any usual and proper manner that the committee directs.
- (7) A person nominated as a candidate for election as an office-bearer or as an ordinary committee member of the association must be a member of the association.

16 Secretary

- (1) The secretary of the association must, as soon as practicable after being appointed as secretary, lodge notice with the association of his or her address.
- (2) It is the duty of the secretary to keep the records of the minutes (whether in written or electronic form) of:
 - (a) all appointments of office-bearers and members of the committee, and
 - (b) the names of members of the committee present at a committee meeting or a general meeting, and
 - (c) all proceedings at committee meetings and general meetings.
- 3) The secretary is to take minutes of proceedings at a meeting. Minutes are forwarded to president for verification prior to next meeting. These must be accepted by the committee at the next succeeding meeting. Secretary uploads approved minutes to the association's secure file storage.

17 Treasurer

It is the duty of the treasurer of the association to ensure that:

- (a) all money due to the association is collected and received and that 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.
- (c) a monthly report of bank balances and a quarterly report of the profit and loss statement are presented to the committee.
- (d) audited financial statements are presented at the annual general meeting of the association.
- (e) All Tax Deductible Donations are to be receipted and recorded.

18 Casual vacancies

(1) In the event of a casual vacancy occurring in the membership of the committee, the committee may appoint a member of the association to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.

(2) A casual vacancy in the office of a member of the committee occurs if the member:

- (a) dies, or
- (b) ceases to be a member of the association, or
- (c) is or becomes an insolvent under administration within the meaning of the [Corporations Act 2001](#) of the Commonwealth, or
- (d) resigns office by notice in writing sent to the secretary or president, or
- (e) is removed from office under clause 19, or
- (f) becomes a mentally incapacitated person, or
- (g) is absent without the consent of the committee from 3 consecutive meetings of the committee, or
- (h) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months, or
- (i) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the [Corporations Act 2001](#) of the Commonwealth.

19 Removal of committee members

(1) The association in general meeting may by resolution remove any member of the committee from the office of member before the expiration of the member's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.

(2) If a member of the committee to whom a proposed resolution referred to in subclause (1) makes representations in writing to the secretary or president (not exceeding a reasonable length) and requests that the representations be notified to the members of the association, the secretary or the president may send a copy of the representations to each member of the association or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

20 Committee meetings and quorum

(1) The committee will meet from time to time in each period of 12 months at the place and time that the committee may determine.

(2) Additional meetings of the committee may be convened by the president or by any member of the committee.

(3) Oral or written notice of a meeting of the committee must be given by the secretary to each member of the committee at least 36 hours (or any other period that may be unanimously agreed on by the members of the committee) before the time appointed for the holding of the meeting.

(4) Notice of a meeting given under subclause (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the majority of the committee members present at the meeting agree to treat as urgent business.

(5) Any 7 members of the committee, 2 of whom must be office-bearers, constitute a quorum for the transaction of the business of a meeting of the committee.

(6) No business is to be transacted by the committee unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present no meeting will be held.

(7) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.

(8) At a meeting of the committee:

(a) the president or, in the president's absence, the vice-president is to preside, or

(b) if the president and the vice-president are absent or unwilling to act, one of the remaining members of the committee chosen by the members present at the meeting is to preside.

21 Appointment of association members as committee members to constitute quorum

(1) If at any time the number of committee members is less than the number required to constitute a quorum for a committee meeting, the existing committee members may appoint a sufficient number of members of the association as committee members to enable the quorum to be constituted.

(2) A member of the committee so appointed is to hold office, subject to this constitution, until the annual general meeting next following the date of the appointment.

(3) This clause does not apply to the filling of a casual vacancy to which clause 18 applies.

22 Use of technology at committee meetings

(1) A committee meeting may be held at 2 or more venues using any technology approved by the committee that gives each of the committee's members a reasonable opportunity to participate.

(2) A committee member who participates in a committee meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

(3) A committee member who participates in a meeting using technology must have the camera on at entry to meeting and during voting.

23 Delegation by committee to sub-committee

(1) The committee may form sub-committees as they see fit.

(2) The committee may, by instrument in writing, revoke wholly or in part any delegation under this clause.

(3) A sub-committee may meet and adjourn as it thinks proper.

24 Voting and decisions

(1) Questions arising at a meeting of the committee or of any sub-committee appointed by the committee are to be determined by a majority of the votes of members of the committee or sub-committee present at the meeting. The President will not have a casting vote.

(2) Each member present at a meeting of the committee or of any sub-committee appointed by the committee (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.

(3) Subject to clause 20 (5), the committee may act despite any vacancy on the committee.

(4) Any act or thing done or suffered, or purporting to have been done or suffered, by the committee or by a sub-committee appointed by the committee, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the committee or sub-committee.

(5) Circular motions may be accepted.

1

Part 4 General meetings

25 Annual general meetings - holding of

- (1) The association must hold its first annual general meeting within 18 months after its registration under the Act.
- (2) The association must hold its subsequent annual general meetings:
 - (a) within 6 months after the close of the association's financial year, or
 - (b) within any later time that may be allowed or prescribed under section 37 (2) (b) of the Act.

26 Annual general meetings - calling of and business at

- (1) The annual general meeting of the association is, subject to the Act and to clause 25, to be convened on the date and at the place and time that the committee thinks fit.
- (2) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
 - (a) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting,
 - (b) to receive from the committee reports on the activities of the association during the last preceding financial year,
 - (c) to elect office-bearers of the association and ordinary committee members,
 - (d) to receive and consider any financial statement or report required to be submitted to members under the Act.
- (3) An annual general meeting must be specified as that type of meeting in the notice convening it.

27 Special general meetings - calling of

- (1) The committee may, whenever it thinks fit, convene a special general meeting of the association.
- (2) The committee must, on the requisition of at least 5% of the total number of members, convene a special general meeting of the association.
- (3) A requisition of members for a special general meeting:
 - (a) must be in writing, and
 - (b) must state the purpose or purposes of the meeting, and
 - (c) must be signed by the members making the requisition, and
 - (d) must be lodged with the secretary, and

- (e) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.
- (4) If the committee fails to convene a special general meeting to be held within 1 month after the date on which a requisition of members for the meeting is lodged with the secretary, any one or more of the members who made the requisition may convene a special general meeting to be held not later than 3 months after that date.
- (5) A special general meeting convened by a member or members as referred to in subclause (4) must be convened as nearly as is practicable in the same manner as general meetings are convened by the committee.
- (6) For the purposes of subclause (3):
 - (a) a requisition may be in electronic form, and
 - (b) a signature may be transmitted, and a requisition may be lodged, by electronic means.

28 Notice

- (1) Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary, at least 14 days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (2) If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the association must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be given to each member specifying, in addition to the matter required under subclause (1), the intention to propose the resolution as a special resolution.

Note. A special resolution must be passed in accordance with section 39 of the Act.
- (3) No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under clause 26 (2).
- (4) A member desiring to bring any business before a general meeting may give notice in writing of that business to the secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.

29 Quorum for general meetings

- (1) No item of business is to be transacted at a general meeting unless a quorum of members entitled under this constitution to vote is present during the time the meeting is considering that item.
- (2) Nine members present (being members entitled under this constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.

- (3) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
- (a) if convened on the requisition of members—is to be dissolved, and
 - (b) in any other case—is to stand adjourned to another time within five weeks of the original date and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.
- (4) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least seven) are to constitute a quorum.

30 Presiding member

- (1) The president or, in the president's absence, the vice-president, is to preside as chairperson at each general meeting of the association.
- (2) If the president and the vice-president are absent or unwilling to act, the members present must elect one of their number to preside as chairperson at the meeting.

31 Adjournment

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (2) If a general meeting is adjourned for 14 days or more, the secretary must give written or oral notice of the adjourned meeting to each member of the association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (3) Except as provided in subclauses (1) and (2), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

32 Making of decisions

- (1) A question arising at a general meeting of the association is to be determined by:
- (a) a show of hands or, if the meeting is one to which clause 37 applies, any appropriate corresponding method that the committee may determine, or
 - (b) if on the motion of the chairperson or if three or more members present at the meeting decide that the question should be determined by a written ballot.
- (2) If the question is to be determined by a show of hands, a declaration by the chairperson is made and an entry to that effect is to be made in the minute book.
- (3) Subclause (2) applies to a method determined by the committee under subclause (1) (a) in the same way as it applies to a show of hands.

(4) If the question is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the chairperson.

33 Special resolutions

A special resolution may only be passed by the association in accordance with section 39 of the Act.

34 Voting

(1) On any question arising at a general meeting of the association a member has one vote only.

(2) In the case of an equality of votes on a question at a general meeting, the vote is lost.

(3) A member is not entitled to vote at any general meeting of the association unless all money due and payable by the member to the association has been paid.

(4) A member is not entitled to vote at any general meeting of the association if the member is under 18 years of age.

(5) The president does not have a casting vote.

35 Proxy votes not permitted

Proxy voting must not be undertaken at or in respect of a general meeting.

Note. Schedule 1 to the Act provides that an association's constitution is to address whether members of the association are entitled to vote by proxy at general meetings.

36 Electronic ballots

the association's secure file storage.

(1) The association may hold an electronic ballot (as the committee determines) to determine any issue or proposal (other than an appeal under clause 12).

(2) An electronic ballot is to be conducted in accordance with Schedule 3 to the Regulation.

37 Use of technology at general meetings

(1) A general meeting may be held at two or more venues using any technology approved by the committee that gives each of the association's members a reasonable opportunity to participate.

(2) A member of an association who participates in a general meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

(3) A committee member who participates in a meeting using technology must have the camera on at entry to meeting and during voting.

Part 5 Miscellaneous

38 Insurance

The association may affect and maintain insurance.

39 Funds - source

(1) The funds of the association are to be derived from annual subscriptions of members, donations and any funds raised by the association, subject to any resolution passed by the association in general meeting, any other sources that the committee determines.

(2) All money received by the association must be deposited as soon as practicable and without deduction to the credit of the association's bank or other authorised deposit-taking institution account.

(3) The association must, as soon as practicable after receiving any money, issue an appropriate receipt.

40 Funds - management

(1) Subject to any resolution passed by the association in general meeting, the funds of the association are to be used solely in pursuance of the objects of the association in the manner that the committee determines.

(2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by 2 authorised signatories.

40A Funds – Gift Fund

(1) The association may apply for Deductible Gift Recipient status in accordance with guidelines as specified by the Australian Taxation Office, and as may be varied from time to time.

(2) If the association's application for Deductible Gift Recipient status under clause 40A(1) is successful, the association will establish and maintain a Gift Fund.

(3) 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 aim of the association. Investment of monies in this fund will be made in accordance with guidelines for public funds as specified by the Australian Taxation Office.

- (4) The public will be invited to contribute to the fund.
- (5) The fund will be administered by a sub-committee, the majority of whom, because of their tenure of some public office or their professional standing, have an underlining community responsibility, as distinct from obligations solely in regard to the aim of the association.
- (6) No monies/assets in this fund will be distributed to members or office bearers of the association, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.
- (7) Receipts for gifts to the public fund must state:
- (a) the name of the public fund and that the receipt is for a gift made to the public fund, and
 - (b) the Australian Business Number of the association, and
 - (c) that the receipt is for a gift, and
 - (d) any other matter required to be included on the receipt pursuant to the requirements of the *Income Tax Assessment Act 1997 (Cth)*.
- (8) The association must comply with any rules that the Commonwealth Treasury Minister or the Commonwealth Minister for the Arts make to ensure that gifts made to the public fund will only be used for the association's aim.
- (9) The association must provide to the Commonwealth Government department responsible for the administration of the Register of Cultural Organisations:
- (a) statistical information on the gifts made to the public fund every 6 months, and
 - (b) any proposed amendments or alterations to clause 40A, to enable the department to assess the effect of any amendments on the public fund's continuing Deductible Gift Recipient status.
- (10) Upon the winding-up or dissolution of the public fund listed on the Register of Cultural Organisations, or the revocation of its endorsement as a Deductible Gift Recipient all its remaining property or funds after all its debts and liabilities have been satisfied must be given or transferred to some other fund, authority or institution having objects similar to the objects of the association's public fund, and whose rules shall prohibit the distribution of its or their income among its or their members, such fund, authority or institution to be eligible for tax deductibility of donations under Subdivision 30-B, section 30-100, of the *Income Tax Assessment Act*

41 Association is non-profit

Subject to the Act and the Regulation, the association must apply its funds and assets solely in pursuance of the objects of the association and must not conduct its affairs so as to provide a pecuniary gain for any of its members.

Note. Section 5 of the Act defines **pecuniary gain** for the purpose of this clause.

42 Distribution of property on winding up of association

(1) Subject to the Act, the Regulations and clause 40A(10), in a winding up of the association, any surplus property of the association is to be transferred to another organisation with similar objects and which is not carried on for the profit or gain of its individual members.

(2) In this clause, a reference to the surplus property of an association is a reference to that property of the association remaining after satisfaction of the debts and liabilities of the association and the costs, charges and expenses of the winding up of the association.

Note. Section 65 of the Act provides for distribution of surplus property on the winding up of an association.

43 Change of name, objects and constitution

An application for registration of a change in the association's name, objects or constitution in accordance with section 10 of the Act is to be made by the public officer or a committee member.

44 Custody of books etc

Except as otherwise provided by this constitution, all records, books and other documents relating to the association must be kept in New South Wales:

- (a) at the main premises of the association, in the custody of the secretary or a member of the association (as the committee determines), or
- (b) if the association has no premises, at the association's official address, in the custody of the public officer.

45 Inspection of books etc

(1) The following documents must be open to inspection, free of charge, by a member of the association at any reasonable hour:

- (a) records, books and other financial documents of the association,
- (b) this constitution,
- (c) minutes of all committee meetings and general meetings of the association.

(2) A member of the association may obtain a copy of any of the documents referred to in subclause (1) on payment of a fee of not more than \$1 for each page copied.

(3) Despite subclauses (1) and (2), the committee may refuse to permit a member of the association to inspect or obtain a copy of records of the association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the association.

46 Service of notices

(1) For the purpose of this constitution, a notice may be served on or given to a person:

- (a) by delivering it to the person personally, or

- (b) by sending it by pre-paid post to the address of the person, or
 - (c) by sending it by facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- (2) For the purpose of this constitution, a notice is taken, unless the contrary is proved, to have been given or served:
- (a) in the case of a notice given or served personally, on the date on which it is received by the addressee, and
 - (b) in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post, and
 - (c) in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent or, if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.

47 Financial year

The financial year of the association is:

- (a) the period of time commencing on the date of incorporation of the association and ending on the following 31 Dec, and
- (b) each period of 12 months after the expiration of the previous financial year of the association, commencing on 1 January and ending on the following 31 December.

Notes.

1. Schedule 1 to the Act provides that an association's constitution is to address the association's financial year.
2. Clause 19 of the Regulation contains a substitute clause 47 for certain associations incorporated under the *Associations Incorporation Act 1984*.

February 2024