

- ANNEXURE -

CONSTITUTION

BANKI HADDOCK FIORA

LAWYERS

Level 10, 179 Elizabeth Street Sydney NSW 2000 Australia

Telephone 61 2 9266 3400 Facsimile 61 2 9266 3455

email@bhf.com.au www.bhf.com.au

Liability limited by a scheme approved under Professional Standards Legislation

TABLE OF CONTENTS

1. Introduction	1
2. Purpose	2
3. Liability of members	7
4. Membership	8
5. Cessation of membership	9
6. General meetings	10
7. Proceedings at general meetings	11
8. Voting at general meetings	13
9. Proxies	14
10. Directors	15
11. Powers and duties of directors	16
12. Proceedings of directors	17
13. Directors' interests	21
14. By-laws	22
15. Minutes	22
16. Secretary	23
17. Seal	23
18. Accounts, audit and records	23
19. Notices	24
20. Indemnity	25
21. Amalgamation	26
22. Notification of amendments	26
ANNEXURE A	27
ANNEXURE B	28

CORPORATIONS ACT 2001

A company limited by guarantee

CONSTITUTION

of

THE WALKLEY FOUNDATION LIMITED

1. Introduction

1.1 Definitions

1.1.1 In this constitution, unless the context otherwise requires:

Company means The Walkley Foundation Limited;

Media Professional means any person who is subject to professional and ethical guidelines and prepares, collects, edits, reports, presents or distributes news, current affairs, opinion or narrative (prose or visual) in any form for communication over any medium;

Public Fund means a fund established for the purpose of receiving unconditional donations from members of the public, that in fact does receive such donations;

Register means the register of members kept in accordance with clause 4.5;

Seal means the common seal of the Company, if any;

Secretary means a person appointed to perform the duties of a secretary of the Company; and

Trust Fund means a fund established for the purpose of receiving conditional gifts.

1.1.2 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.2 Interpretation

1.2.1 Unless the context otherwise requires a word which denotes:

- (a) the singular denotes the plural and vice versa;
- (b) any gender denotes the other genders; and
- (c) a person includes an individual, a body corporate and a government.

Constitution

1.2.2 Unless the context otherwise requires, a reference to:

- (a) any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation;
- (b) any other instrument where amended or replaced means that instrument as amended or replaced; and
- (c) a thing or amount is a reference to the whole and each part of it.

1.3 Corporations Act 2001

Except where the contrary intention appears in this constitution, an expression has, in a provision of this constitution which deals with a matter dealt with by a relevant provision of the *Corporations Act 2001*, the same meaning as in that provision of the *Corporations Act 2001*.

1.4 Replaceable rules excluded

To the extent permitted by law, the replaceable rules in the *Corporations Act 2001* do not apply to the Company.

1.5 Headings

Headings must be ignored in the interpretation of this constitution.

1.6 Business Day

A reference to a business day means a business day as defined in the *Corporations Act 2001*.

1.7 References to and calculations of time

1.7.1 Where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event.

1.7.2 A provision of this constitution, except that specifying the time for deposit of proxies with the Company, which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

2. Purpose

2.1 Objects

2.1.1 The principal purpose for which the Company is established is to promote excellence in visual art, literature, film, video, television, photography, documentary and radio.

2.1.2 The further purposes of the Company are:

Constitution

- (a) to administer the Public Fund;
- (b) to apply for and maintain the Company's status as a deductible gift recipient;
- (c) to build a community of journalists, story-tellers, practitioners of narrative non-fiction and other creative industry workers committed to promoting excellence in these crafts across all platforms and ensuring media space that is free, ethical and of high quality;
- (d) to organise, administer, promote and take any other action necessary for the operation of professional development programs for Media and Creative Professionals, including the Walkley Awards;
- (e) to be a party to any proceedings before any court established by any statute having jurisdiction over any matter affecting the interests of the Company or its members;
- (f) to enter into and carry into effect contracts and arrangements with any persons, firms, corporations or organisations in respect of the use of any rights vested in the Company or any property vested in the Company;
- (g) to produce magazines, websites and/or other publications of interest to Media and Creative Professionals in any available platform;
- (h) to implement education and training programs including, without limitation, forums, conventions, lectures and courses in writing, journalism, documentary film, broadcasting, photography and visual art;
- (i) to carry on any business that may seem to the Company to be capable of being conveniently carried on in connection with the above objects;
- (j) to acquire or undertake the whole or any part of the business, property or liabilities of any person or company carrying on any undertaking or business which the Company is authorised to carry on or possessed of property suitable for the purposes of the Company;
- (k) to promote any company or companies for the purpose of acquiring all or any of the property rights and liabilities of the Company or for any other purpose which may seem directly or indirectly calculated to benefit the Company;
- (l) generally to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property and any rights or privileges which the Company may think necessary or convenient for the purposes of its undertaking or business;
- (m) to effect insurances on the property of the Company and against the death or sickness of or accident or injury to any Director, servant or employee of the Company or other person or persons whose death, sickness or injury would in the opinion of the Directors of the Company be likely to prejudicially affect the undertaking or revenue of the Company and generally to insure against loss, accident, disaster or damage of any and every description;

Constitution

- (n) to give any guarantee or security or enter into any bond in connection with the Company's business or in connection with the business of or any proceedings at law or in equity and/or in admiralty instituted by or against any member or customer of the Company or any other person;
- (o) to lend money to such persons and on such terms as may seem expedient and in particular to members and others having dealings with the Company, and to guarantee the performance of contracts by any such persons;
- (p) to receive money on loan and to borrow or raise or secure the payment of money in such manner as the Company shall think fit and in particular by the issue of debentures or debenture stock perpetual or otherwise charged upon all or any of the Company's property both present and future or by bank overdraft, mortgage, lien or otherwise and to purchase, redeem or pay off any such securities;
- (q) to make, draw, accept, endorse, discount, execute, issue and negotiate cheques, promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable or transferable instruments;
- (r) to invest and deal with the moneys of the Company not immediately required upon such securities and in such manner as may from time to time be determined;
- (s) to remunerate any person or company for services rendered or to be rendered in placing or assisting to place or guaranteeing the placing of any debentures or securities of the Company or in or about the formation or promotion of the Company or the conduct of its business;
- (t) to sell or dispose of the undertaking of the Company or any part thereof for such consideration as the Company may think fit, and in particular for shares, debentures or securities of any other company having objects altogether or in part similar to those of this Company;
- (u) to sell, improve, manage, develop, exchange, lease, mortgage, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company;
- (v) to employ such persons as may be necessary for carrying on the business of the Company;
- (w) to appoint any agent or agents for the collection and recovery of any moneys receivable by the Company in the exercise of its powers or otherwise for the purpose of the exercise of any of such powers;
- (x) to procure the Company to be registered, incorporated or otherwise duly constituted or recognised if necessary or advisable according to the law of any State of the Commonwealth of Australia or in any part of the world;

Constitution

- (y) to establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the Company or the dependants or connections of such persons and 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 show or exhibition or for any public, general or useful object;
- (z) to undertake and execute any trusts the undertaking whereof may seem desirable and either gratuitously or otherwise;
- (aa) to adopt such means of making known the business and operations of the Company as may seem expedient and in particular by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes, rewards and donations;
- (bb) to take, apply for or otherwise acquire and hold shares in any other company having objects altogether or in part similar to those of this Company or carrying on any business capable of being conducted so as to directly or indirectly benefit this Company;
- (cc) to obtain any provisional order or Act of Parliament and to enter into any arrangement with any Government or authority, federal, state, local or otherwise for enabling the Company to carry any of its objects into effect or for effecting any modification of the Company's constitution or for any other purpose which may seem expedient and to oppose any proceedings or applications which may seem calculated, directly or indirectly, to prejudice the Company's interests;
- (dd) to do all or any of the abovementioned things in any part of the world where the same may lawfully be done respectively and as principals, agents, contractors, trustees or otherwise and by or through trustees, agents or otherwise and either alone or in conjunction with any other corporations, companies, firms or persons; and
- (ee) generally to do all other things that may appear to the Company to be incidental or conducive to the attainment of the objects or any of them.

2.2 Powers

The Company can only exercise the powers in section 124(1) of the *Corporations Act 2001* to:

- (a) carry out the objects in clause 2.1; and
- (b) do all things incidental or convenient in relation to the exercise of the power under paragraph (a).

Constitution

2.3 Income

The income and property of the Company:

- (a) may only be applied to the carrying out of the objects of the Company referred to in clause 2.1 and the exercise of the powers referred to in clause 2.2; and
- (b) must not be paid directly or indirectly to any member,

provided that nothing in this constitution prevents the payment in good faith by the Company of:

- (c) reasonable and proper expenses to any officer of the Company in accordance with clause 10.8;
- (d) reasonable and proper remuneration and expenses to any employee of the Company or to any member or other person in return for services or goods provided to the Company in the usual course of business;
- (e) interest at market rates on money borrowed from any member; or
- (f) market rent for premises let by any member to the Company.

2.4 Public Fund

2.4.1 The Company must establish and maintain a Public Fund.

2.4.2 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 Company and will only be used to further the following purposes of the Public Fund:

- (a) to promote excellence in visual art, literature, film, video, television, photography, documentary and radio;
- (b) to build a community of journalists, story-tellers, practitioners of narrative non-fiction and other creative industry workers committed to promoting excellence in these crafts across all platforms and ensuring media space that is free, ethical and of high quality;
- (c) to implement education and training programs including, without limitation, forums, conventions, lectures and courses in writing, journalism, documentary film, broadcasting, photography and visual art; and
- (d) generally to do all other things that may appear to the Public Fund Committee to be incidental or conducive to the attainment of the objects or any of them.

2.4.3 Investment of monies in this fund will be made in accordance with guidelines for public funds as specified by the Australian Taxation Office.

Constitution

- 2.4.4 The Public Fund will be administered by a committee (**Public Fund Committee**), whose members will be appointed in accordance with clause 12.12 below, the majority of whom, because of their tenure of some public office or their professional standing, have an underlying community responsibility, as distinct from obligations solely in regard to the cultural objectives of the Company.
- 2.4.5 No monies or assets in the Public Fund will be distributed to members or office bearers of the Company, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.
- 2.4.6 The department responsible for the administration of the Register of Cultural Organisations will be notified of any proposed amendments or alterations to provisions for the Public Fund, to assess the effect of any amendments on the Public Fund's continuing Deductible Gift Recipient status.
- 2.4.7 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;
 - (b) the Australian Business Number of the Company;
 - (c) the fact that the receipt is for a gift; and
 - (a) any other matter required to be included on the receipt pursuant to the requirements of the *Income Tax Assessment Act 1997*.
- 2.4.8 If on the winding up or dissolution of the Public Fund, there remains after satisfaction of all its debts and liabilities, any property or funds, the property or funds shall not be paid to or distributed among its members, but shall be given or transferred to some other entity, fund, authority or institution having objects similar to the objects of this Public Fund, and whose rules shall prohibit the distribution of its or their income among its or their members. The entity, fund, authority or institution to whom the property or funds is being transferred must be eligible for tax deductibility of donations under Subdivision 30-B, section 30-100, of the *Income Tax Assessment Act 1997* and listed on the Register of Cultural Organisations maintained under the Act.

2.5 Trust Fund

The Company must establish and maintain a Trust Fund.

3. Liability of members

3.1 Limitation

The liability of the members is limited.

Constitution

3.2 Contribution

Each member must contribute to the assets of the Company, if it is wound up during the time he or she is a member or within 1 year afterwards, such amount as may be required (not exceeding \$100) for:

- (a) payment of the debts and liabilities of the Company contracted before the time at which he or she ceases to be a member;
- (b) the costs, charges and expenses of winding up the Company; and
- (c) the adjustment of the rights of the contributories among themselves.

4. Membership

4.1 Membership

Eligibility for membership of the Company is restricted to:

- (a) the Chair of the Walkley Advisory Board; and
- (b) the following federal officers of the Media Entertainment and Arts Alliance (**Alliance**):
 - (i) the chief executive officer of the Alliance;
 - (ii) the president of the media section of the Alliance; and
 - (i) two vice-presidents of the Alliance whose primary section is the media section.

4.2 Form of application

An application for membership must be:

- (a) in writing in the form set out in annexure A or as otherwise approved by the directors;
- (b) accompanied by such evidence as to eligibility for membership as per clause 4.1; and
- (c) signed by the applicant.

4.3 Admission to membership

If an applicant for membership satisfies the requirements in clauses 4.1 and 4.2, the applicant must be accepted as a member of the Company, at which time the name and details of the applicant must be entered in the Register, in accordance with clause 4.5.

Constitution

4.4 Entitlements

Each member has the right to:

- (a) receive notices of and attend and be heard at any general meeting; and
- (b) vote at any general meeting.

4.5 The Register

4.5.1 A register of members of the Company must be kept in accordance with the *Corporations Act 2001*.

4.5.2 The following must be entered in the Register in respect of each member:

- (a) the full name of the member;
- (b) the address, telephone and facsimile number, if any, of the member;
- (c) the date of admission to and cessation of membership; and
- (d) such other information as the directors from time to time require.

4.6 Notification by members

Each member must notify the Secretary in writing of any change in the name, address, telephone or facsimile number of the member within 1 month after the change.

5. Cessation of membership

5.1 Resignation

5.1.1 A member may not resign from membership of the Company until he or she has paid all debts owed to the Company.

5.1.2 A member may resign from membership of the Company by giving written notice to the Secretary.

5.1.3 The resignation of a member takes effect 1 month from the date of receipt of the notice of resignation or such later date as is stated in the notice, unless the member ceases to be eligible to be a member due to clause 10.6, in which case the member's resignation takes effect immediately.

5.1.4 The resignation of a member of the Company disqualifies that person from being eligible to be a director of the Company.

Constitution

5.2 Cessation of membership

A member ceases to be a member:

- (a) on failing to satisfy the requirements for membership under this constitution, including by ceasing to hold the offices referred to in clause 4.1; or
- (b) on death.

6. General meetings

6.1 Convening

6.1.1 Except as permitted by law a general meeting must be held at least once in every calendar year.

6.1.2 A director may convene a general meeting at any time.

6.2 Notice

6.2.1 A notice of a general meeting must:

- (a) be given at least 21 days before the meeting;
- (b) specify the place, the date and the time of meeting; and
- (c) except as expressly set out in this constitution, state the general nature of the business to be transacted.

6.2.2 If the Secretary receives a written notice from any director requesting that business be brought before the next general meeting, the Secretary must include that business in the next notice of general meeting.

6.3 Cancellation or postponement

6.3.1 The directors may cancel or postpone the holding of any general meeting whenever they think fit (other than a meeting requisitioned by members under the *Corporations Act 2001*).

6.3.2 Written notice of the cancellation or postponement must be given to all persons entitled to receive notice of the meeting at least 7 days before the date for which the meeting was convened and must specify:

- (a) the reason for the cancellation or postponement; and
- (b) where the meeting is postponed, a date, time and place for holding the meeting.

6.3.3 There must be at least 21 days between the date on which a notice postponing the meeting is given and the date on which the meeting is to be held.

6.3.4 The only business that may be transacted at a postponed meeting is that specified in the original notice convening the meeting.

Constitution

6.3.5 The accidental omission to give notice of the cancellation or postponement of any general meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the postponed meeting.

6.4 Representation of member

Any member may be represented at any general meeting by a proxy or otherwise in accordance with this constitution or the *Corporations Act 2001*, and if so represented is deemed to be present in person.

7. Proceedings at general meetings

7.1 Quorum

7.1.1 No business may be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

7.1.2 A quorum is constituted by:

- (a) where there are 3 members or less, the quorum is equal to the number of members; or
- (b) where there are more than 3 members, the quorum is 3 members.

7.1.3 To avoid doubt, proxies may not be counted for the purpose of satisfying the requirements of this clause.

7.2 Absence of quorum

If a quorum is not present within 30 minutes after the time appointed for the meeting, where the meeting was convened on the requisition of members, the meeting is dissolved, or in any other case:

- (a) the meeting stands adjourned to the day, and at the time and place, which the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
- (b) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the members present constitute a quorum.

7.3 Ordinary and special business

7.3.1 The business of an annual general meeting is:

- (a) to receive and consider the profit and loss account, the balance sheet, the reports of the directors and the auditors and the directors' statement required by the *Corporations Act 2001* to be attached to the accounts of the Company;
- (b) where necessary, to appoint auditors; and
- (c) to transact any other business which under this constitution or the *Corporations Act 2001* ought to be transacted at an annual general meeting.

Constitution

7.3.2 All other business transacted at an annual general meeting and all business transacted at any other general meeting is special.

7.4 Appointment of chairperson

7.4.1 If the directors have elected one of their number as chairperson of their meetings, in accordance with clause 12.6, that person is entitled to preside as chairperson at every general meeting.

7.4.2 The directors present at a general meeting must elect one of their number to be chairperson of the meeting if:

- (a) a director has not been elected as chairperson of directors meetings; or
- (b) the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act.

7.4.3 The members present at a general meeting must elect one of their number to be chairperson of the meeting if:

- (a) there are no directors present within 15 minutes after the time appointed for the holding of the meeting; or
- (b) all directors present decline to take the chair.

7.4.4 A person is only eligible to be elected a chairperson if that person is elected a member of the company or if the members unanimously agree to a non-member being appointed as chairperson.

7.5 Chairperson's powers

Subject to the terms of this constitution and the *Corporations Act 2001*, the chairperson's ruling on all matters relating to the order of business, procedure and conduct of the general meeting is final, although a motion of dissent from a ruling of the chairperson may be accepted.

7.6 Adjournment of meetings

7.6.1 The chairperson may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and place.

7.6.2 The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

7.6.3 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

7.6.4 Except as provided by clause 7.6.3, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Constitution

8. Voting at general meetings

8.1 Voting rights

Each member present at a general meeting has 1 vote.

8.2 Decisions

8.2.1 Decisions made at the general meeting will be effective if passed with at least 3 votes.

8.2.2 Each matter submitted to a meeting must be decided on a show of hands or a poll demanded in accordance with clause 8.4.

8.3 Chairperson's vote at general meetings

The chairperson of a general meeting is not entitled to a second or casting vote.

8.4 Demand for a poll

8.4.1 A poll may be demanded by any members present.

8.4.2 A poll may be demanded:

- (a) before a vote is taken;
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

8.4.3 The demand for a poll may be withdrawn.

8.4.4 The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.

8.4.5 A poll demanded on a matter other than the election of a chairperson or on a question of adjournment must be taken when and in the manner the chairperson directs. The result of the poll is the resolution of the meeting at which the poll is demanded.

8.4.6 A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.

8.5 Evidence of resolutions

Unless a poll is demanded in accordance with clause 8.4, a declaration by the chairperson that a resolution has on a show of hands been:

- (a) carried;
- (b) carried unanimously or by a particular majority; or
- (c) lost,

Constitution

and an entry to that effect in the book containing the minutes of the proceedings of the Company, signed by the chairperson of that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

8.6 Objections

8.6.1 An objection may be raised to the qualification of a voter only at the meeting at which the vote objected to is given or tendered.

8.6.2 The objection must be referred to the chairperson of the meeting, whose decision is final.

8.6.3 A vote not disallowed following the objection is valid for all purposes.

9. Proxies

9.1 Appointment

A member who is entitled to vote at a meeting may appoint proxies in accordance with the *Corporations Act 2001*.

9.2 Form of proxy

A document appointing a proxy must be in the form set out in annexure B to this constitution or as otherwise approved by the directors from time to time.

9.3 Effect of proxy

9.3.1 An instrument appointing a proxy confers authority to demand or join in demanding a poll.

9.3.2 If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.

9.3.3 A proxy may be revoked at any time by notice in writing to the Company.

9.4 Voting by proxy

9.4.1 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.

9.4.2 A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid despite:

- (a) the previous death or unsoundness of mind of the principal; or
- (b) the revocation of the instrument (or of the authority under which the instrument was executed) or of the power,

Constitution

if the Company has not received written notification of the death, unsoundness of mind or revocation at the registered office of the Company before the commencement of the meeting at which the instrument is used or the power is exercised.

10. Directors

10.1 Number of directors

Subject to the *Corporations Act 2001*, until otherwise determined by the members in general meeting, the number of directors must not be less than 3 nor more than 7.

10.2 Eligibility

10.2.1 Any person who, under clause 4, is eligible to be appointed as a member of the Company, and is so appointed, is required to be appointed as a director of the Company.

10.2.2 In addition to the directors appointed under clause 10.2.1, further directors may be elected by unanimous vote of the members in general meeting. Subject to clause 10.3, a person is not eligible to be elected as a director at a general meeting unless:

- (a) the person gives written notice to the Company that the person is a candidate for election to the office of director at the meeting at least 7 days before the meeting; and
- (b) the notice referred to in paragraph (a) is signed by 2 directors in support of the nomination.

10.3 Composition

10.3.1 The directors comprise those persons in office as at the conclusion of the annual general meeting at which this constitution is adopted and such other persons appointed or elected in accordance with this clause 10.

10.3.2 A member of the Company must be a director of the Company and must be appointed as a director on acceptance of membership in accordance with clause 4.

10.4 Insufficient directors

In the event of a vacancy in the office of a director, the remaining directors may act to appoint a person to fill the vacancy, but if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of convening a general meeting.

10.5 Resignation

10.5.1 Any director may retire from office on giving notice in writing to the Company of his intention to do so.

10.5.2 The resignation of a director takes effect from the date of receipt of the notice of resignation or such later date as is stated in the notice.

Constitution

10.6 Vacation of office

In addition to the circumstances in which the office of a director becomes vacant by virtue of the *Corporations Act 2001* or another provision of this constitution, the office of director becomes vacant if the director:

- (a) becomes an insolvent under administration;
- (b) 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;
- (c) is absent without the consent of the directors from the meetings of the directors held during a continuous period of 6 months and the directors resolve that the office of that director be vacated;
- (d) becomes prohibited from being a director by reason of an order made under the *Corporations Act 2001*; or
- (e) has ceased to be a member under clause 5.2.

10.7 Directors' fees

The directors will not be paid fees for their services.

10.8 Payment for expenses

The directors may, on resolution of the Company in general meeting, be paid all travelling, accommodation and other expenses reasonably and properly incurred by them:

- (a) in attending and returning from meetings of the directors or any committee of the directors or any general meetings; or
- (b) otherwise in the execution of their duties as directors.

11. Powers and duties of directors

11.1 General management

11.1.1 The business of the Company is to be managed by the directors who may exercise all those powers of the Company as are not, by the *Corporations Act 2001* or by this constitution, required to be exercised by the Company in general meeting.

11.1.2 Without limiting the powers of management conferred on the directors by any other provision of this constitution, the directors may exercise all the powers of the Company to:

- (a) borrow money;
- (b) mortgage or charge any property or business of the Company or all or any of its uncalled capital;

Constitution

- (c) issue debentures; and
- (d) give any other security for any debt, liability or obligation of the Company or of any other person.

11.1.3 No decision made or resolution passed by the Company in general meeting invalidates any prior act of the directors which would have been valid if that decision or resolution had not been made or passed.

11.2 Negotiable instruments

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

11.3 Appointment of attorney

11.3.1 The directors may appoint any person to be an attorney of the Company:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors);
- (c) for the period; and
- (d) subject to the conditions,

they think fit.

11.3.2 Any power of attorney may contain those provisions for the protection and convenience of persons dealing with the attorney that the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

12. Proceedings of directors

12.1 Meetings of directors

12.1.1 The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

12.1.2 The directors are to be treated as present together when in communication by telephone or other means of audio or audio-visual communication if each of the directors participating in the communication is able to hear each of the other participating directors.

12.2 Convening of meeting

Any director may at any time, and a Secretary must on the requisition of any director, convene a meeting of the directors.

Constitution

12.3 Notice of meeting

12.3.1 Notice of every directors' meeting must be given to each director.

12.3.2 Subject to clause 12.3.3, any notice of a meeting of directors may be given in writing, including by facsimile or any other means of written communication, and must be given at least 5 days prior to the meeting.

12.3.3 The required period of notice for a particular meeting may be disregarded, if and only if all directors waive their right to notice in writing.

12.4 Quorum

12.4.1 No business may be transacted at any meeting of the directors unless a quorum of directors is present at the time when the meeting proceeds to business.

12.4.2 Unless otherwise determined by the Company in general meeting, at a meeting of directors a quorum is present if there are present at the meeting 5 directors.

12.5 Absence of quorum

If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) the meeting stands adjourned to the day, and at the time and place, which the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
- (b) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the directors present may act for the purposes of convening a general meeting.

12.6 Appointment of chairperson of directors

12.6.1 The directors may elect a chairperson of their meetings and determine the period for which the person elected is to hold office.

12.6.2 If a chairperson has not been elected, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the directors present may choose one of their number to be chairperson of the meeting.

12.6.3 A director is only eligible to be elected a chairperson if that director is also a member of the Company, per clause 10.2.1 above.

12.7 Chairperson's vote at directors meetings

A chairperson is not entitled to a second or casting vote.

12.8 Voting rights

Subject to this constitution, at each directors' meeting each director present has 1 vote.

Constitution

12.9 Decisions

Decisions of the directors will be effective if passed by a vote of at least three of those directors present and entitled to vote at the meeting.

12.10 Teleconference

12.10.1 For the purpose of this constitution the contemporaneous linking together in oral communication by telephone, audio-visual or other instantaneous means (**Teleconference**) of a number of the directors (being not less than a quorum) constitutes a meeting of the directors.

12.10.2 The provisions of this constitution relating to a meeting of the directors apply to a Teleconference insofar as they are not inconsistent with the provisions of this clause 12.10.

12.10.3 The following provisions apply to a Teleconference:

- (a) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part at the commencement of the meeting and each director so taking part is deemed for the purposes of this constitution to be present at the meeting; and
- (b) at the commencement of the meeting each director must announce his presence to all other directors taking part in the meeting.

12.10.4 If the Secretary is not present at a Teleconference one of the directors present must take minutes of the meeting.

12.10.5 A minute of the proceedings of a Teleconference is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the chairperson of the meeting.

12.11 Circulated resolutions

12.11.1 If:

- (a) all directors at that time present in Australia; and
- (b) any director absent from Australia who has left a facsimile number at which he may be given notice,

have signed a document containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those terms is deemed to have been passed at a meeting of the directors held on the day and at the time on which the document was last signed by a director.

12.11.2 For the purposes of clause 12.11.1, 2 or more separate documents containing statements in identical terms, each of which is signed by one or more directors, together constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.

Constitution

- 12.11.3 A reference in clause 12.11.1 to all the directors does not include a reference to a director who, at a meeting of directors, would not be entitled to vote on the resolution.
- 12.11.4 Every resolution passed under clause 12.11.1 must as soon as practicable be entered in the minutes of the directors' meetings.
- 12.11.5 A facsimile addressed to or received by the Company and purporting to be signed by a director for the purpose of this clause 12.11 is deemed to be a document in writing signed by that director.

12.12 Committees

- 12.12.1 The directors may:
- (a) delegate any of their powers to committees consisting of such directors or other persons as they think fit and may revoke the delegation; and
 - (b) appoint advisory committees.
- 12.12.2 Any committee formed under clause 12.12.1 must conform to any regulations that may from time to time be imposed on it by the directors, insofar as the regulations do not conflict with the Public Fund's eligibility (at the time or in the future), or obligations, as a Deductible Gift Recipient.
- 12.12.3 Unless otherwise determined by the directors, the meetings and proceedings of a committee are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.
- 12.12.4 The directors may at any time by resolution revoke any delegation of power or disband any committee established under this clause 12.12.
- 12.12.5 The directors will appoint the members of the Walkley Advisory Board, which Board will comprise a minimum of 10 and a maximum of 12 people.
- 12.12.6 The chair of the Walkley Advisory Board will be appointed by the directors of the Company.
- 12.12.7 The directors will appoint the members of the Public Fund Committee, which will comprise a minimum of 3 and a maximum of 6 people.
- 12.12.8 The chair of the Public Fund Committee will be appointed by the directors of the Company, and must be a financial member of the Alliance.

12.13 Validation of acts

All acts done:

- (a) at any meeting of directors or a committee of directors; or
- (b) by any person acting as a director,

Constitution

are, although it is afterwards discovered that there was some defect in the appointment or continuance in office of any of the persons concerned or that any of them were disqualified or were not entitled to vote, as valid as if each of them had been duly appointed and had duly continued in office and was entitled to vote.

13. Directors' interests

13.1 Prohibition

13.1.1 Except to the extent permitted by the *Corporations Act 2001* and subject to clause 13.1.2, a director who has a material personal interest in a matter that is being considered at a meeting of directors must not:

- (a) be counted in a quorum;
- (b) vote on the matter; or
- (c) be present while the matter is being considered at the meeting.

13.1.2 If a director who has a material personal interest in a matter that is being considered at a meeting of the directors is not prohibited by the *Corporations Act 2001* from being present at the meeting and voting, the director may be present, be counted in the quorum and may be heard but may not vote on the matter.

13.2 Existence of interest

13.2.1 Subject to clause 2.4.5, a director may, to the extent permitted by the *Corporations Act 2001* and with the consent of the Company in general meeting:

- (a) enter into contracts or arrangements or have dealings with the Company either as vendor, purchaser, mortgagee or otherwise;
- (b) be interested in any contract, operation, undertaking or business entered into, undertaken or assisted by the Company or in which the Company is or may be interested;
- (c) hold an office or position of profit with the Company or any body corporate in which the Company is a member or otherwise interested; or
- (d) retain for the director's own benefit any profit or benefit arising from any such relationship or transaction.

13.2.2 The director is not, because of entering into any relationship or transaction referred to in clause 13.2.1:

- (a) disqualified from the office of director; or
- (b) liable to account to the Company for any profit arising from the relationship or transaction by reason of being a director of the Company or of the fiduciary relationship between the director and the Company.

Constitution

- 13.2.3 For the purpose of clause 13.2.1, **Company** includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

13.3 Disclosure

Subject to any other requirements of the *Corporations Act 2001*, the nature of the director's interest referred to in clause 13.2 must be disclosed by the director before or at the meeting of directors at which the matter is first taken into consideration (if the interest then exists) or in any other case at the first meeting of the directors after the director becomes so interested.

14. By-laws

14.1 Power

The directors may from time to time make such by-laws as they consider necessary to provide for:

- (a) the proper control, administration of the Company's affairs, operations, finances, interests, effects and property; and
- (b) such other matters as they consider relevant.

14.2 Applicability of By-laws

A by-law:

- (a) is subject to this constitution;
- (b) must not be inconsistent with this constitution; and
- (c) is binding on all members and directors and has the same effect as this constitution.

14.3 Amending and repealing by-laws

- 14.3.1 The directors may, subject to the requirements of any person or authority having jurisdiction in respect of a matter dealt with in the by-laws, amend and repeal by-laws from time to time.

- 14.3.2 Notwithstanding clause 14.3.1, the Company in general meeting may, subject to the requirements of any person or authority having jurisdiction in respect of a matter dealt with in the by-laws, amend or repeal any by-law made by the directors.

15. Minutes

The directors must carry out the obligations imposed on the Company by the *Corporations Act 2001* to cause minutes of meetings to be kept.

Constitution

16. Secretary

A Secretary holds office on such terms, as to remuneration and otherwise, as the directors determine.

17. Seal

17.1 Effect

This clause 17 has effect only if the Company has a Seal.

17.2 Safe custody

The directors must provide for the safe custody of the Seal.

17.3 Affixing

17.3.1 The Seal may not be affixed to any instrument except by the authority of a resolution of the directors or of a committee of the directors authorised by the directors.

17.3.2 Every instrument to which the Seal is affixed must be signed by at least 1 director and countersigned by another director, a Secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

17.3.3 A director may sign or countersign as director any instrument to which the Seal is affixed although the instrument relates to a contract, arrangement, dealing or other transaction in which he is interested and his signature is effective with respect to compliance with the requirements of this constitution as to the affixing of the Seal despite his interest.

17.4 Signatures by mechanical means

The directors may determine generally or in a particular case that the signature of a director, Secretary or other person appointed by the directors for the purpose of signing documents to which the Seal is affixed may be written by a specified mechanical means on documents which bear evidence of examination by the auditor.

18. Accounts, audit and records

18.1 Accounts

18.1.1 The directors must cause proper accounting and other records to be kept in accordance with the *Corporations Act 2001*.

18.1.2 The directors must distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached to them) as required by the *Corporations Act 2001*.

18.2 Audit

18.2.1 A registered company auditor must be appointed.

Constitution

18.2.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the *Corporations Act 2001*.

18.3 Inspection

18.3.1 All directors and members are entitled to inspect the accounting records and other documents of the Company.

18.3.2 All accounting records and documents of the Company must be made available to the public, for example by way of publication on the Company's website.

19. Notices

19.1 Means of giving notices

A notice may be given to the addressee by:

- (a) delivering it in writing to the street address of the addressee;
- (b) sending it by prepaid ordinary post to the street address of the addressee; or
- (c) sending it by facsimile to the facsimile number of the addressee,

specified in the Register or by such other method of communication determined by the directors from time to time.

19.2 Time notices are given

A notice is to be regarded as given:

- (a) if delivered, at the time of delivery;
- (b) if sent by post, on the 3rd day after posting; or
- (c) if sent by facsimile, at the time transmission is completed.

19.3 Proof of giving notices

Proof of the sending of a notice by facsimile and the time of completion of transmission may be established by production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee.

19.4 Notice of general meeting

19.4.1 Notice of every general meeting must be given in the manner authorised by this constitution to:

- (a) every member;
- (b) every director; and

Constitution

- (c) the auditor for the time being of the Company.

19.4.2 No other person is entitled to receive notice of general meetings.

20. Indemnity

20.1 Right to indemnity

Subject to this clause 20, to the extent permitted by law the Company indemnifies each officer (as defined for the purposes of section 199A of the *Corporations Act 2001*) against any liability to another person incurred by the officer as an officer of the Company.

20.2 Restrictions

The indemnity referred to in clause 20.1 does not indemnify an officer against a liability:

- (a) owed to the Company or a related body corporate as defined in section 50 of the *Corporations Act 2001* (**Related Body Corporate**);
- (b) for a pecuniary penalty order under section 1317G of the *Corporations Act 2001* or a compensation order under section 1317H of the *Corporations Act 2001*; or
- (c) that is owed to someone other than the Company or a Related Body Corporate and did not arise out of conduct in good faith.

20.3 Legal costs

20.3.1 The indemnity referred to in clause 20.1 does not indemnify an officer against legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:

- (a) in defending or resisting proceedings in which the officer is found to have a liability for which the officer could not be indemnified under clause 20.2;
- (b) in defending or resisting criminal proceedings in which the officer is found guilty;
- (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
- (d) in connection with proceedings for relief to the officer under the *Corporations Act 2001* in which the court denies the relief.

20.3.2 For the purposes of this clause 20.3, the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

Constitution

20.4 Insurance premiums

The Company may, in accordance with the *Corporations Act 2001*, pay the premiums on contracts insuring a person who is or has been an officer of the Company.

21. Amalgamation

Where it furthers the objects of the Company to amalgamate with any one or more other organisations having similar objects, the other organisation or organisations must have rules prohibiting the distribution of its or their assets and income to members and must be exempt from income tax.

22. Notification of amendments

The department responsible for the administration of the Register of Cultural Organisations will be notified of any proposed amendments or alterations to the Company's constitution, to assess the effect of any amendments on the Company's deductible gift recipient status.

ANNEXURE A

APPLICATION FOR MEMBERSHIP OF THE WALKLEY FOUNDATION LIMITED

(name)

applies for membership of The Walkley Foundation Limited and agrees to be bound by its constitution.

.....
Signature

.....
Name (please print)

.....
Office held

Constitution

ANNEXURE B

PROXY FORM

Name and address of member:

Appointment of proxy

I appoint:

(name of person)

or in his or her absence, or if no person is named, the chairperson of the meeting as my proxy to vote in accordance with the following directions (or, if no directions have been given, as the proxy sees fit) at the general meeting of ## to be held on *[insert date, time and place]* and at any adjournment of that meeting.

Vote on resolutions

Resolution 1: That ##

For **Against**

Dated:

.....
Signature

.....
Signature

.....
Name (please print)

.....
Name (please print)

.....
Office held

.....
Office held

Constitution

SIGNING THIS FORM

Two directors or a director and secretary or a duly authorised officer of the member must sign this form on behalf of the member. If signed by an authorised officer, please provide the original or an attested copy of the authority. The authority must be signed by 2 directors or a director and secretary.

If signing on behalf of a member as the member's attorney, please provide the original or an attested copy of the power of attorney.