

# CONSTITUTION

of

## DARWIN COMMUNITY ARTS INCORPORATED

AMENDED 19 APRIL 2008

AT THE ANNUAL GENERAL MEETING OF THE ASSOCIATION  
AT CHAMBERS CRESCENT THEATRE, MALAK

The name of the Association shall be **DARWIN COMMUNITY ARTS INCORPORATED** (hereinafter referred to as 'the Association').

### OBJECTS

1.1 The objects of the Association shall be:-

- a) to stimulate, promote, plan, implement and develop community arts activities.
- b) to promote and provide community cultural development and arts development activities; and
- c) to provide to artists and the broader public advice information and resources relating to the arts.

1.2 The objects of the Association shall be construed disjunctively and not conjunctively and no object of the Association shall be read down or limited by reference to any other subject.

### POWERS

2 In furtherance of the objects of the Association, the Association may exercise any or all of the following powers:-

- a) to promote public interest in the objects and undertaking of the Association;
- b) to raise money by borrowing or by public subscription or any such manner as the Board shall from time to time decide and upon such terms and conditions (including terms and conditions as to the payment of interest and the giving of security) as the Board may decide;
- c) to receive gifts, donations, grants, bequests, devises and assistance of any other kind (whether money or otherwise);
- d) to acquire or obtain control of such land as the Board may from time to time deem advisable;
- e) to develop any land acquired or controlled by the Association so as to include amenities appropriate to the objects of the Association;
- f) to permit any other person or persons or organisation to use any or all of the facilities of, or under the control of the Association for any purpose approved by the Board, subject to any conditions imposed by the Board;
- g) to buy, sell and otherwise deal with (whether by lease, exchange, hire or in any other manner whatsoever) property of any description whether real or personal, tangible or intangible.
- h) the construction, maintenance, and alteration of building or works necessary or convenient for any of the objects or purposes of the Association;
- i) the taking of such steps from time to time as the Board or the members in general meeting may deem expedient for the purposes of procuring contributions to the funds of the Association, whether by way of donation, subscriptions, or otherwise;
- j) the printing, publishing and distributing of such newspapers, books, periodicals, leaflets or other material (whether printed or recorded on electronic or magnetic medium or otherwise) as the Board thinks desirable;

l) the making of gifts, subscriptions or donations to any of the funds, authorities or institutions to which paragraph (a) of subsection (1) of section 78 of the Income Tax Assessment Act 1936, as amended, of the Commonwealth relates;

m) to carry out all or any of the objects of the Association, or to exercise all or any of the powers of the Association, either as principal, agent, contractor, trustee or otherwise, and either alone or in conjunction with others;

n) to do all such other things as are incidental to or conducive of the attainment of the objects of the Association.

#### **MEMBERSHIP**

3.1 Subject to this clause membership of the Association shall be open to any person or organisation who subscribes to the objects of the Association.

3.2 The Association must have at least 5 members.

3.3 The Board shall fix the membership fee applicable to any category of membership, and may amend or add to the categories of membership at its discretion provided however that no such decision taken by the Board shall take away any of the rights of any Honorary Life Member.

3.4 Until such time as the Board may otherwise decide, the categories of membership shall be:-

- (i) Ordinary Financial Member – Those individuals who have paid the membership fee prescribed for the membership year in question. Subject to clause 8.4, an ordinary financial member shall be entitled to one vote at any meeting of the Association, and to be nominated for election,
- (ii) Corporate Member – A corporation which has paid the membership fee prescribed by the Board. The rights of membership of a corporate member shall be exercised by such person as is nominated in writing by the corporation from time to time. Subject to clause 8.4, the corporation through its nominee shall be entitled to one vote at any meeting of the Association and its nominee may be elected or appointed to the Board and shall be entitled to exercise one vote at Board Meetings.
- (iii) Family Membership – May be awarded to members of a family, who shall be entitled to two votes at any meeting of the Association to be exercised by one or two members nominated by the family. Subject to clause 8.4, either or both nominees of the family shall be entitled to be elected or appointed to the Board individually.
- (iv) Associated Members – Persons who have become members of or subscribers to program areas (such as Fringe members) shall be deemed to be Associated Members of the Association who shall be entitled to receive such member benefits as the Board may from time to time decide, but shall not be voting members by virtue only of such Associated Membership.
- (v) Honorary Members – Persons who may be appointed Honorary Members by the Board or its delegate. Honorary Members shall be entitled to membership benefits but shall not be entitled to vote.

3.5 The Membership Year shall commence on the date of joining or renewal of membership and will expire 12 months from the date of joining or renewal of membership.

3.6 The Board may in its discretion grant honorary life membership of the Association to any person who in the opinion of the Board has rendered exceptional service to the objects of the Association and such life members shall thereafter be exempted from any obligation to pay membership fees and shall be entitled to vote or be elected as if that life member were a financial member PROVIDED ALWAYS that not more than two life memberships shall be granted by any Board during any one financial year of the Association.

#### **RIGHTS OF MEMBERS**

4.1 The following must be available for inspection by members:

- (a) a copy of this Constitution;
- (b) minutes of general meetings;
- (c) annual reports and annual financial reports.

4.2 A member may raise a grievance or complaint about a Board member, the Board or another member of the Association. The grievance or complaint must be dealt with by the procedures set out in clause 23.7 below.

### **INCOME OF ASSOCIATION**

- 5.1 The income and property of the Association, however derived, shall be applied solely toward the promotion of the objects of the Association and no portion thereof shall be paid or transferred, directly or indirectly, by dividend, bonus or otherwise, to any member of the Association.
- 5.2 Nothing in the foregoing provisions of this clause prevents the payment in good faith to a member of the Association of:-
- i) remuneration in return for goods supplied to the Association by the member in the ordinary course of business or for services actually rendered to the Association by the member (not including service of the Association as a Board member) if the member has been engaged by the Board to perform such services;
  - ii) interest at a rate not exceeding twelve percent (12%) on moneys lent to the Association by the member; or
  - iii) a reasonable and proper sum by way of rent for premises let to the Association by the member.
- 5.3 Nothing in this Constitution shall prevent any person who is a member of the Association from being employed by the Association.

### **DISCLOSURE OF INTEREST**

- 6.1 A member of the Board who has any financial or material interest (whether direct or indirect) in any contract or arrangement made or proposed to be made with the Association shall disclose his/her interest at the first meeting of the Board at which the contract or arrangement is first taken into consideration, if his/her interest then exists, or, in any other case, at the first meeting of the Board after he/she has acquired his/her interest.
- 6.2 If a member of the Board acquires financial or material interest (whether direct or indirect) in a contract or arrangement after it is made or entered into he/she shall disclose his/her interest at the first meeting of the Board after he/she becomes so interested.
- 6.3 Any member of the Board shall not be present at any discussion or consideration by the Board of any contract or arrangement in which he/she has any financial or material interest (whether directly or indirectly) nor shall any such member vote on any question pertaining to such contract or arrangement.
- 6.4 The last preceding sub-clause shall not prevent a member attending a meeting of the Board at the request of the other members of the Board for the purpose of supplying information requested by such other members provided that such member withdraws from the meeting immediately after supplying the information requested or remains absent until the contract or arrangement in question has been dealt with by the other members of the Board.

### **ROLE, POWERS & RESPONSIBILITY OF BOARD**

- 7.1 The care, control and management of the business and affairs of the Association shall be vested in the Board and, subject to this Constitution, the Board may delegate from time to time all or part of its power and functions to such person or persons as it sees fit other than this power of delegation or a duty imposed on the Board by the Act or any other law.
- 7.2 As soon as practicable after being elected to the Board, each Board member must become familiar with the Associations Act ("the Act") and regulations made under the Act.
- 7.3 The Board is collectively responsible for ensuring the Association complies with the Act and regulations made under the Act.

### **COMPOSITION OF BOARD**

- 8.1 Subject to this Constitution the Board shall comprise the persons for the time being holding the following offices:-
- Chairperson
  - Deputy Chairperson
  - Honorary Secretary
  - Honorary Treasurer
  - Four Board Persons
  - Executive Officer
  - One Staff Board member

8.2 A staff Board member shall be elected by a majority of the staff present at a staff meeting at which a quorum is present. Such election may occur at any time following a staff Board member's resignation or his/her inability or unwillingness to serve as staff Board member. A staff Board member shall retire but may seek re-election on the 28 February each year or at the first staff meeting having a quorum in each calendar year, whichever date shall first occur. In the event of a tied vote for election of staff Board member, the election shall be determined by the casting of lot.

8.3 For the purposes of clause 8.1, 8.2, 10.2 and "staff" shall include full time, part time or casual employees at the time being employed for a period of six (6) months or longer by the Association, or such other employee as may from time to time be determined by the Board.

8.4 For purposes of paragraph 8.2, a quorum at a staff meeting shall be half the number of full time, part time or casual employees at the time being employed for a period of six (6) months or longer by the association.

#### **ELECTION & MEMBERSHIP OF BOARD**

9.1 No person shall be entitled to be nominated for election as a Board Member nor nominate another individual for election nor vote in the election of Board Members unless that person's membership (or the membership of the Corporate Member of which that person is a nominee) is current and has been continuous for the preceding 21 days.

9.2 A member is not eligible for election to the Board unless the Secretary receives a written nomination for that member by another member prior to the commencement of the annual general meeting at which the election is to be conducted. The nomination must be signed by –

(a) the nominator and a seconder; and

(b) the nominee to signify his or her willingness to stand for election.

9.3 A person who is eligible for election or re-election may –

(a) propose or second himself or herself for election or re-election; and

(b) vote for himself or herself.

9.4 If the number of persons nominated for election to the Board under clause 9.2 does not exceed the number of vacancies to be filled, the Chairperson must declare the persons to be duly elected as members of the Board at the annual general meeting.

9.5 If vacancies remain on the Board after the declaration under clause 9.4, additional nominations of Board members may be accepted from the floor of the annual general meeting.

9.6 If the nominations from the floor do not exceed the number of remaining vacancies, the Chairperson must declare those persons to be duly elected as members of the Board.

9.7 If the nominations from the floor are less than the number of remaining vacancies, the unfilled vacancies are taken to be casual vacancies and must be filled by the new Board in accordance with clause 9.16.

9.8 If the number of nominations exceeds the number of vacancies on the Board, ballots for those positions must be conducted.

9.9 The ballot must be conducted in a manner determined from time to time by resolution at a general meeting.

9.10 The members chosen by ballot must be declared by the Chairperson to be duly elected as members of the Board.

9.11 A Board member holds office until the next annual general meeting unless the member vacates the office under clause 9.15 or is removed under clause 11.1.

9.12 Subject to clause 9.13, at an annual general meeting the office of each Board member becomes vacant and elections for a new Board must be held.

9.13 The Chairperson of the outgoing Board must preside at the annual general meeting until a new member is elected as Chairperson.

9.14 Members may serve consecutive terms on the Board.

9.15 The office of a Board member becomes vacant if –

(a) the member –

- (i) is disqualified from being a Board member under section 30 or 40 of the Act;
- (ii) resigns by giving written notice to the Board;
- (iii) dies or is rendered permanently incapable of performing the duties of office by mental or physical ill-health;
- (iv) ceases to be a resident of the Territory; or
- (v) ceases to be a member of the Association;

(b) the member is absent from more than –

- (i) 3 consecutive Board meetings (without leave of the Board or sufficient excuse); or
- (ii) 3 Board meetings in the same financial year without tendering an apology to the Chairperson;

of which meetings the member received notice and the Board has resolved to declare the office vacant.

9.16 If a casual vacancy shall occur between annual general meetings in any position on the Board (other than the positions of Executive Officer and Staff Board Person) that position shall be filled by such person (being a member of the Association entitled to vote at meetings of the Association) as is appointed to do so by the remaining members of the Board PROVIDED ALWAYS that such person cease to hold such office at the next ensuing Annual General Meeting of the Association.

#### **BOARD MEETINGS**

10.1 The Board shall meet not fewer than four (4) times in each year and no more than three (3) calendar months shall elapse between any two consecutive meetings of the Board. The Chairperson, or at least half the Board members, may at any time convene a special meeting of the Board.

10.2 At any meeting of the Board the quorum shall be five (5) persons of which not more than one shall be an employed member of staff (as defined by clause 8.3).

10.3 At each meeting of the Board the Chairperson shall, if he is present, act as Chairperson of that meeting. If the Chairperson is not present at the meeting then the Deputy Chairperson shall act as Chairperson. If neither the Chairperson nor Deputy-Chairperson are present at a meeting then members of the Board present shall nominate one of their members to act as Chairperson for the meeting.

10.4 At every meeting of the Board, in the event that a consensus decision cannot be achieved, the Chairperson shall have a deliberative vote, and, if there is an equality of votes, a casting vote.

10.5 The procedure to be followed at a Board meeting must be determined from time to time by the Board.

10.6 The order of business may be determined by the members present at the meeting.

10.7 Only the business for which the meeting is convened may be considered at a special meeting.

#### **REMOVAL OF BOARD MEMBER**

11.1 The Association, through a special general meeting of members, may remove any Board member before the member's term of office ends.

11.2 If a vacancy arises through removal under clause 11.1 an election must be held to fill the vacancy.

### **EXECUTIVE OFFICER**

- 12.1 Subject to this Constitution, the Board may employ a person as Executive Officer.
- 12.2 Subject to this Constitution and to any directions given by the Board the Executive Officer shall be responsible for the day to day management of the activities of the Association.
- 12.3 The Executive Officer shall be ex officio a member of the Board and have full voting rights.
- 12.4 Notwithstanding any other provision of this Constitution the Executive Officer shall cease to be a member of the Board immediately upon the termination or purported termination of his/her employment as Executive Officer.
- 12.5 The Executive Officer shall not be the public officer of the Association for the purposes of the Act (or any legislation substituted therefor).
- 12.6 The Board may choose to appoint more than one Executive Officer. In such event each Executive Officer shall be entitled to attend Board meetings PROVIDED THAT the Board shall nominate one Executive Officer to be a Board Member ex officio pursuant to clause 12.3 hereof.

### **CESSATION OF MEMBERSHIP**

- 13 A person shall cease to be a member of the Association if he/she:-
- a) dies;
  - b) becomes bankrupt or applies to take or takes advantage of any law relating to bankrupt or insolvent debtors or compounds with his creditors,
  - c) becomes of unsound mind;
  - d) resigns his/her membership by writing under his/her hand;
  - e) is not a current financial member of the Association.

### **FINANCIAL YEAR**

- 14 The financial year of the Association shall be deemed to commence on 1 January each year and to terminate on 31 December following.

### **FINANCIAL MANAGEMENT**

- 15.1 The Association must open an account with a financial institution from which all expenditure of the Association is made and into which all of the Association's revenue is deposited.
- 15.2 Subject to any restrictions imposed by the Association at a general meeting, the Board may approve expenditure on behalf of the Association within the limits of the budget.
- 15.3 All funds of the Association must be deposited into the financial account of the Association no later than 5 working days after receipt or as soon as practicable after that day.
- 15.4 With the approval of the Board, the Treasurer may maintain a cash float provided that all money paid from or paid into the float is accurately recorded at the time of the transaction.
- 15.5 The responsibility of the Board under clause 7.3 for ensuring compliance with the Act includes meeting the requirements of Part 5 of the Act and regulations made for that Part relating to –
- (a) the keeping of accounting records;
  - (b) the preparation and presentation of the Association's annual statement of accounts; and
  - (c) the auditing of the Association's accounts.

### **ANNUAL GENERAL MEETINGS**

- 16.1 The Annual General Meeting of the Association be held during the month of ~~March~~ April in each year.

16.2 The business of the Annual General Meeting shall include:-

- a) the presentation of the Chairperson's report;
- b) the presentation of the annual financial report by the Honorary Treasurer;
- c) the election of Board members;
- d) the appointment of auditor; and
- e) general business.

#### **SPECIAL GENERAL MEETINGS**

17.1 A Special General Meeting shall be called by the Chairperson upon receipt of a request in writing from not less than ten (10) members of the Association or from not less than three (3) members of the Board.

17.2 The Chairperson may call a Special General Meeting at any time.

17.3 Where a Special General Meeting is requested pursuant to clause 17.1 such Special General Meeting shall be called for a date not less than one month and not more than six weeks after the date of receipt by the Chairperson of the notice requesting the Special General Meeting.

#### **NOTICE OF GENERAL MEETINGS**

18.1 Subject to this Constitution a notice in writing of each Annual General Meeting and Special General Meeting ("general meeting") shall be sent to each member of the Association and advertised in the press specifying the principal business to be conducted at the general meeting.

18.2 Each such notice shall be given not less than 14 clear days prior to date appointed for the holding of the general meeting.

18.3 Subject to the provisions of this clause, a notice shall be deemed to have been sufficiently given if it is delivered personally or forwarded by prepaid mail to the last known address in the Association's records and, provided such notice is duly given, no general meeting shall be deemed invalid because of the failure of any member or members to receive such notice.

#### **QUORUM & LACK OF QUORUM FOR GENERAL MEETINGS**

19.1 At a general meeting, 5 members present in person constitutes a quorum.

19.2 If within 30 minutes after the time specified in the notice for the holding of a general meeting a quorum is not present -

- (a) for an annual general meeting or special general meeting convened under clause 17.2 - the meeting stands adjourned to the same time on the same day in the following week and to the same place;
- (b) for a meeting convened under clause 23.5 - the members who are present in person or by proxy may proceed with hearing the appeal for which the meeting is convened; or
- (c) for a meeting convened under clause 17.1 - the meeting lapses.

19.3 If within 30 minutes after the time appointed by clause 19.2(a) for the resumption of an adjourned general meeting a quorum is not present, the members who are present in person or by proxy may proceed with the business of that general meeting as if a quorum were present.

19.4 The Chairperson may, with the consent of a general meeting at which a quorum is present, and must, if directed by the members at the meeting, adjourn that general meeting from time to time and from place to place.

19.5 There must not be transacted at an adjourned general meeting any business other than business left unfinished or on the agenda at the time when the general meeting was adjourned.

19.6 If a general meeting is adjourned for a period of 30 days or more, the Secretary must give notice of the adjourned general meeting as if that general meeting were a fresh general meeting.

#### **VOTING**

20.1 Subject to clause 3.4, each member present in person or by proxy at a general meeting is entitled to a deliberative vote.

20.2 At a general meeting –

- (a) an ordinary resolution put to the vote is decided by a majority of votes made in person or by proxy; and
- (b) a special resolution put to the vote is passed if three-quarters of the members who are present in person or by proxy vote in favour of the resolution.
- (c) A secret ballot may be demanded by the Chairperson or by 3 or more members present in person or by proxy.

20.3 If demanded, a secret ballot must be taken immediately and in the manner the Chairperson directs.

20.4 Subject to clause 3.4, a member may appoint in writing another member to be the proxy of the appointing member to attend and vote on behalf of the appointing member at any general meeting.

#### **AMENDMENT OF CONSTITUTION**

21.1 This Constitution shall not be changed except upon the vote of three-quarters of the numbers present at a general meeting called in accordance with clauses 21.2 and 21.3.

21.2 Where it is proposed to amend the Constitution, not less than twenty-one days notice of such proposal shall be given to members of the Association in accordance with this Constitution.

21.3 Such notice shall refer to the clause or clauses of the Constitution proposed to be amended and shall specify the substance of the proposed amendment.

21.4 Nothing in this Constitution shall prevent a duly convened general meeting of the Association from amending the Constitution by an amendment similar to but not identical with the proposed amendment of which notice has been given provided however that this clause shall not permit the amendment of a clause in the Constitution unless the notice of the general meeting specified that it was proposed to move an amendment of the clause.

#### **POWER TO MAKE BY-LAWS**

22. The Board may make by-laws not inconsistent with this Constitution or for the administration of the assets of the Association or in respect of any other matter whatsoever in connection with or incidental to the attainment of the objects of the Association and such by-laws shall be binding on members of the Association.

#### **EXPULSION OF A MEMBER, GRIEVANCES AND DISPUTES**

23.1 Subject to giving a member an opportunity to be heard or to make a written submission the Board may resolve to expel a member for conduct detrimental to the interests of the Association.

23.2 Particulars of the alleged conduct shall be communicated to the member at least 14 days before the meeting of the Board at which the matter will be determined, and the member shall be given the opportunity to be present at the meeting to answer to the particulars.

23.3 The determination of the Board shall be communicated to the member, and in the event of an adverse determination the member shall, subject to clauses 23.4 and 23.5, cease to be a member 14 days after the Board has communicated its determination to the member.

23.4 It shall be open to a member to appeal to the Association in general meeting against the expulsion. The intention to appeal shall be communicated to the secretary or public officer of the Association within 14 days from the date upon which the determination of the Board has been communicated to the member.

- 23.5 The Board must, within 30 days after it receives a notice under clause 23.4, convene a special general meeting to deal with the appeal to which the notice relates.
- 23.6 The members present at the general meeting must, by resolution, either confirm or set aside the decision of the Board to expel the member. The member is not suspended or does not cease to be a member until the decision of the Board to suspend or expel him or her is confirmed by a resolution of the members.
- 23.7 This clause applies to disputes between a member and another member or a member and the Board.
- (1) Within 14 days after the dispute comes to the attention of the parties to the dispute, they must meet and discuss the matter in dispute, and, if possible, resolve the dispute.
  - (2) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days after the meeting, hold another meeting in the presence of a mediator.
  - (3) The mediator must be –
    - (a) a person chosen by agreement between the parties; or
    - (b) in the absence of agreement –
      - (i) for a dispute between a member and another member – a person appointed by the Board; or
      - (ii) for a dispute between a member and the Board – a person who is a mediator appointed or employed by the department administering the Act.
  - (4) A member of the Association can be a mediator.
  - (5) The mediator cannot be a party to the dispute.
  - (6) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
  - (7) The mediator, in conducting the mediation, must –
    - (a) give the parties to the mediation process a reasonable opportunity to be heard;
    - (b) allow due consideration by all parties of any written statement submitted by any party; and
    - (c) ensure natural justice is accorded to the parties to the dispute throughout the mediation process.
  - (8) The mediator must not determine the dispute.
  - (9) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

#### **WINDING UP**

- 24.1 The Association shall not be wound up except upon the vote of two-thirds of the members of the Association present at a general meeting of the Association convened for the purpose of considering such winding up.
- 24.2 If upon the winding up or dissolution of this organisation there remains after satisfaction of all its debts and liabilities, any property, the property shall not be paid to or distributed among its members, but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Association or company, and whose rules shall prohibit the distribution of its or their income among its or other members, such institution or institutions to be eligible for tax deductibility of donations under Section 78 (1) (a) of the Income Tax Assessment Act of 1930 and listed on the Register of Cultural Organisations maintained under the Act.

**SEAL**

- 25.1 The seal of the Association shall be in the form of a rubber stamp inscribed with the name of the Association encircling the word 'seal'.
- 25.2 The seal of the Association shall not be affixed to any instrument except by the authority of the Board and the affixing thereof shall be witnessed by the signatures of any two members of the Board.
- 25.3 The seal shall remain in the custody of the Executive Officer.