

**CONSTITUTION**  
**OF**  
**ABORIGINAL ART ASSOCIATION OF**  
**AUSTRALIA LTD**

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## 1. Definitions

(a) In this Constitution:

‘Aboriginal Art’ means works of art and craft created and/or designed by Aborigines.

‘Aboriginal Art Code’ means the document prepared by the Board that sets out binding rules, guidelines and structures to be observed in their dealings with Aboriginal artists.

‘Aboriginal Member’ means any Member who is an Aboriginal.

‘Aborigine and Aboriginal’ mean someone of Aboriginal or Torres Strait Islander descent.

‘Association’ means the Aboriginal Art Association of Australia Ltd.

‘Board’ means the officers of the Association comprising the officers referred to in paragraph 17..

‘Code of Ethics’ means the Code of Ethics and Business Practice of the Association as set out in Appendix 1.

‘Complaints Handling Procedures’ means the procedures set out by the Board governing the investigation of complaints raised regarding the Code of Ethics.

‘Constitution’ means this Constitution and all supplementary substituted or amending provisions for the time being in force.

‘DCEC’ means the Disputes & Code of Ethics Committee which is defined in paragraph 11.

‘General Meeting’ means a general meeting of the Members of the Association;

‘Law’ means the Corporations Act 2001 (Cth) including any regulations, amendment or re-enactment thereof for the time being in force;

‘Member’ means a member of the Association and includes all the categories of membership listed in paragraph 6. Any reference to "he" "she" or "it" may be used interchangeably;

‘Secretary’ means any person appointed to perform the duties of a Secretary of the Association and includes an Honorary Secretary.

- (b) Expressions referring to writing shall unless the contrary intention appears, be construed as references to printing, lithography, photography and other modes of representing or reproducing words in a visible form;
- (c) Headings in this Constitution shall be disregarded in interpreting its provisions.
- (d) Words or expressions contained in this Constitution shall be interpreted in accordance with the provisions of the Interpretation Act 1987 (NSW), and of the Act as in force at the date at which this Constitution became binding on the Association.
- (e) Unless the context otherwise requires, where words are used in the singular they shall include the plural and singular words shall include the plural. Similarly, words referring to the masculine gender, feminine gender or which are gender neutral, shall always be taken as referring to the others.

## **2. Name of Association**

The name of the Association is **ABORIGINAL ART ASSOCIATION OF AUSTRALIA LTD** (*hereinafter called the "Association" or "AAAA"*).

## **3. Purposes and Objects**

The purposes and objects for which the Association has been established are:

- (a) Principal purposes:
  - (i) The AAAA serves and represents artists, individuals and organisations that produce, promote, protect or support Aboriginal art and the cultures that create and nurture that art.
  - (ii) The AAAA’s goal is to ensure a vibrant, healthy, sustainable and inclusive Aboriginal visual arts industry.
  - (iii) The AAAA recognises above all that the industry depends upon the

creative genius of Aboriginal artists producing cultural material and that the long term viability of the industry depends upon that culture remaining strong.

- (iv) The AAAA seeks to provide the industry with and to promote a nationwide safe and ethical environment in which Aboriginal artists are free and safe to ply their trade for fair and prompt remuneration, free from exploitation, bullying and coercion.
  - (v) The AAAA operates as an advocate for all industry participants, whether artist, gallery or dealer and whether independent or art centre affiliated.
  - (vi) The AAAA provides Members with an ideal mechanism to expand their contacts, remain abreast of and discuss issues relevant to the industry and grow their businesses.
- (b) to foster a commitment to excellence in product, presentation and service in the sale of Aboriginal artworks throughout Australia;
  - (c) to foster consumer confidence in those dealing in Aboriginal arts and crafts;
  - (d) to promote honesty and integrity in dealings between the public, museums, Aboriginal artists, their representatives, galleries and dealers in Aboriginal art;
  - (e) to develop, promote, uphold and enforce compliance with the Code of Ethics, including investigating alleged breaches of the Code of Ethics;
  - (f) to enhance the professional standing of the Members;
  - (g) to develop stronger ties between dealers in Aboriginal art and Aboriginal artists, their agents, arts bodies and Government;
  - (h) to promote financial accountability in the relationships between retailers, agents and manufacturers and the Aboriginal artists with whom they work;
  - (i) to provide support for Aboriginal artists;
  - (j) to encourage emerging Aboriginal artists;

- (k) to assist in the development and promotion of a national standard for authentication of Aboriginal artworks;
- (l) to bring together Members of the Association for the mutual improvement and higher education of one another;
- (m) to promote the interest of Members of the Association in all matters affecting the good standing of their reputation;
- (n) to admit and recognise as Members of the Association only such persons as shall comply with this Constitution, the Association's Code of Ethics and any other rules which are made from time to time by the Board;
- (o) to promote, support or oppose legislative or other measures affecting the business interests of Members and the welfare of Aboriginal artists.
- (p) to promote the role of artists and community organisations in the preservation and maintenance of the cultural life of Aboriginal communities;
- (q) to collect, maintain and circulate to Members statistics and other information in regard to the Aboriginal art market or any legislation affecting it, and to print, publish, issue and/or circulate such papers, pamphlets, periodicals, books, circulars and other written material as may appear to be conducive to any of these objects;
- (r) to undertake the arbitration, settlement and adjudication of disputes between Members, arising out of trade and commerce;
- (s) to subscribe or guarantee money for charitable or benevolent objects, or for any public, general or useful object but in particular those relevant to the Aboriginal arts;
- (t) to do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the Association.

#### **4. Application of Income and Assets**

All income and property of the Association shall be applied solely towards the promotion of the objects of the Association as set forth in this Constitution. No portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to the Members of the Association **PROVIDED THAT** nothing herein shall

prevent the payment, in good faith, of reasonable and proper remuneration to any Member, officer, or servant of the Association in return for any services actually rendered to the Association or to any Member in relation to any contract, right or claim in which he or she is interested and which arises otherwise than by their membership. Without limiting the generality of the foregoing, nothing herein shall prevent the payment for goods or services supplied by any Member in the ordinary or usual way of business, nor prevent the payment of interest for money lent or reasonable and proper rent for premises demised or let by any Member to the Association.

## 5. Liability of Members and Winding Up

- (a) The liability of the Members is limited.
- (b) If:
  - (i) the Association is wound up while a person or other entity is a Member or within one (1) year after the person or other entity ceased to be a Member; and
  - (ii) the debts and liabilities of the Association exceed its assets;each Member or former Member described in paragraph 5(b)(i) of this Constitution shall be liable to contribute to the property of the Association for debts and liabilities contracted before s/he ceased to be a Member and for the cost of winding up and for the adjustment of the rights of the contributories among themselves, **BUT SUCH LIABILITY SHALL NOT EXCEED \$100.**
- (c) If upon the winding-up or dissolution of the Association there remains any property, after satisfaction of all its debts and liabilities, the same shall not be paid to or distributed among its Members but shall be given or transferred to some other organisation or organisations having objects similar to the objects of the Association and which prohibits the distribution of income and property among members, such organisation or organisations to be eligible for tax deductibility of donations under Subdivision 30-B of the Income Tax Assessment Act 1997 (Cth), or successor legislation or if effect cannot be given to this provision, then to some cultural object approved under Subdivision 30-B of the Income Tax Assessment Act 1997 (Cth) or successor legislation.

## **6. Membership Categories and Member Rights**

- (a) There are five categories of membership:
  - (i) Trade Member, which includes galleries (exhibiting and non-exhibiting, specialist and non-specialist), overseas galleries, organisations and businesses trading in Aboriginal art including art retailers, auction houses and art wholesalers, independent art consultants and art centres;
  - (ii) Associate Member, which includes advocacy organisations, bureaucracies, public galleries, organisations and businesses associated with Aboriginal art and any of the categories listed under Trade Membership that either wish only to take up Associate Membership or have not yet met the industry experience requirements for Trade Membership;
  - (iii) Artist Member, being Aboriginal artists;
  - (iv) Supporter Member, which includes industry supporters who do not own or operate retail or wholesale Aboriginal art businesses;
  - (v) Corporate Member, whereby an organisation joins the Association on behalf of blocks of Trade Members or Artist Members, such as resource organisations and Aboriginal co-operatives.
- (b) Members may, as long as their membership is current and they continue to comply with the provisions of this Constitution and Code of Ethics, describe themselves as a “Member of the Aboriginal Art Association of Australia”. They may also display the logo of the Association.
- (c) Associate Members and Supporter Members shall have no voting rights in the Association.
- (d) A Member may be either an individual or an incorporated body.
- (e) Membership is by AAAA Board acceptance only and is not transferable.
- (f) Where two or more Members work in the same business, they shall have only one vote.



## **7. Application for Membership and Membership Fees**

- (a) Every applicant for Trade Membership must satisfy all of the following criteria in order to be accepted for Trade Membership, unless decided otherwise by the Board:
  - (i) In the case of an individual applicant, be at least twenty-one (21) years of age and have had a demonstrable industry involvement for one year;
  - (ii) In the case of an applicant that is a company, it must have been dealing in Aboriginal art under the same business name for a continuous period of not less than one year;
  - (iii) During the above periods, have demonstrated the capability of complying with this Constitution and the Code of Ethics, to the satisfaction of the Board;
  - (iv) Have signed a written agreement to abide by the Code of Ethics (as amended from time to time); and
  - (v)
    - (a) Agree to permit a representative appointed by the Board, being a person that the Board considers has the appropriate expertise and independence, to scrutinise the Member's trading premises and stock in trade, from time to time.
    - (b) Before granting membership, the Board must be satisfied that the knowledge of the applicant is satisfactory in the areas of:
      - (i) regulations relevant to trading in Aboriginal art;
      - (ii) the applicant's specialised field(s) of trading; and
      - (iii) the Code of Ethics.
- (b) Membership is open to all applicants falling within paragraphs 6 and 7 of this Constitution.
- (c) Application for membership shall be made in writing to the Secretary and shall be signed by the applicant and shall be in such form as the Board may from time to time prescribe. The application shall be accompanied by payment of an application fee which shall be \$100 for all Members other than Supporter Members and Artist Members, who shall be liable for a payment of \$10, unless varied by the Board. This application fee is

non-refundable regardless of the outcome of the application but will be deducted from the joining fee if the application is successful.

- (d) The Secretary shall advise Members of the application in the Association newsletter or by email and request them to advise the Board within 30 days as to any objection that they may have to the applicant's grant of membership.
- (e) All objections to proposed membership shall be treated in confidence, both by the objector and the Board. Within ninety (90) days, the Board shall decide on the admission or rejection of the applicant and advise its decision to the Secretary. The decision to admit an applicant to membership requires a two-thirds majority vote of the Board in favour of the applicant.
- (f) The Secretary shall advise the applicant of the Board's acceptance or rejection of the applicant's membership. In no case shall the Secretary be required to give any reason for the rejection of an application for membership.
- (g) Any correspondence between the Association, the applicant or any objector or any information divulged by the applicant in respect of an application for membership shall be treated by the Board as having been provided in confidence.
- (h) When an applicant's membership application has been accepted by the Board, the Secretary shall forthwith send the applicant written notice of the acceptance and a request for:
  - (i) payment of any unpaid application fee, joining fee and first annual subscription fee, and
  - (ii) a written agreement to abide by the Code of Ethics.
- (i) If payment of any unpaid application fee, joining fee and/or the first annual subscription fee are not received within two (2) calendar months after the date of the notice of acceptance to membership, the Board may, in its discretion, cancel its acceptance of the applicant for membership of the Association.
- (j) Subscription fees will be determined annually by the Board by no later than 30 June each year.

- (k) All annual subscription fees are payable as of the first day of July in every year or at such other time as determined from time to time by the Members at a General Meeting.
- (l) The Board may vary any fee from time to time in respect of individual applicants or Members.

## **8. Cessation of Membership**

- (a) If the subscription fees of a Member shall remain unpaid for a period of three (3) calendar months after they become due then the Member may after notice of the default has been sent to it by the Secretary or Honorary Treasurer be debarred by resolution of the Board from all privileges of membership and its name may be removed by the Board from the Register of Members. The Board may reinstate the Member and restore its name to the Register on payment of all amounts in arrears, if the Board sees fit to do so. Whether by agreement of both parties, voluntary resignation, or being removed, the Member ceases to be a Member then it must immediately remove all references to its membership of the AAAA and all AAAA displays/logos etc. from all websites, stationery, premises, etc.
- (b) A Member may at any time by giving notice in writing to the Secretary resign its membership of the Association but shall continue to be liable for any annual subscription fees and all amounts in arrears due and unpaid at the date of its resignation and for all other moneys due by it to the Association and in addition for any sum not exceeding \$100 for which it is liable as a Member of the Association under paragraph 5 of this Constitution.

## **9. Disputes Between Members**

- (a) This paragraph 9 governs disputes between Members where the dispute does not involve matters involving the Code of Ethics. Disputes involving the Code of Ethics are dealt with in paragraph 10 of this Constitution.
- (b) In the event that there is a dispute between the Members of the Association, the Members shall negotiate in good faith to endeavour to resolve the dispute.

- (c) If any matter remains unresolved for ten (10) days after the dispute arose, either party may deliver to the other a notice requesting that the dispute be referred forthwith to the Disputes and Code of Ethics Committee (DCEC).
- (d) The Member wishing to refer the dispute to the DCEC shall give written notice to the Secretary of the Association stating that there is a dispute between Members, setting out details of the dispute in the form required by the Secretary from time to time and asking for the DCEC to provide recommendations to settle the matter or recommendations to the Board as to how the Board should adjudicate on the matter.
- (e) Provided that paragraphs 9 (b) to 9 (d) have been complied with, the DCEC shall convene within fourteen days of the delivery of the notice referred to in paragraph 9 (d) and make best efforts in good faith to assist the Members to settle the dispute.
- (f) Members agree that participation in any mediation proposed by the DCEC to assist in dispute resolution is compulsory. If the either Member fails to take part in mediation, or in the opinion of the DCEC fails to meaningfully engage in the mediation process, the DCEC shall have the option of discontinuing assisting in settling the matter and/or discontinuing the process of providing the Board with recommendations on how to resolve the matter, without further reference to the Member or Members who have failed to take part in or failed to meaningfully engage in the mediation.
- (g) If following the referral of the matter to the DCEC, the dispute is satisfactorily resolved and the resolution of the dispute is confirmed in writing by both Members, no further action will be taken by the Association in respect of the dispute.
- (h) Provided that paragraph 9 (f) has not been invoked, if the Members and the DCEC are unable to resolve the dispute by negotiation and mediation to both the Members' satisfaction, the DCEC shall proceed to investigate the matter. The DCEC shall be responsible for investigating a dispute and giving its recommendations in writing to the Board.
- (i) Each party shall be given the opportunity to be interviewed by the DCEC and be given the opportunity to put forward submissions in writing. Neither taking part in an interview nor providing written submissions shall be mandatory.
- (j) Upon completion of its investigation, the DCEC shall provide the Board with a written report detailing:

- (i) the substance of the dispute;
  - (ii) the DCEC's findings; and
  - (iii) the DCEC's recommendations.
- (h) A copy of the DCEC's report shall be provided to the Members involved.
- (i) The Board shall provide 14 days' Notice of the Meeting in which it will consider the DCEC report.
- (j) The meeting must take place within 28 days of the receipt of the DCEC report.
- (k) The Members involved may make further written submissions to the Board. Any submissions must be received by the Board no later than 7 days prior to the Meeting.
- (l) The Members involved will be entitled to address the Board in the Meeting for a maximum of 20 minutes each unless given leave for a longer period by the chairperson.
- (m) The Board must issue its decision within 7 days of the Meeting.
- (n) No party has the right of appeal except by leave of the Board.
- (o) The decision of the Board shall be by a simple majority except where the Member is to be expelled from the Association in which case the Board must observe the processes set out in paragraphs 12 (e) and 12 (f).
- (p) Members agree to be bound by the final decision of the Board once any possible Board granted right of appeal has been concluded.
- (q) The parties to the dispute shall pay their own costs incurred in the resolution process under this paragraph 9.
- (r) Subject to a determination of the Board to the contrary, the parties to a dispute shall treat all documents delivered to the Board or the DCEC, and steps taken in relation to a dispute, as confidential and shall not, without having obtained the prior written permission of the AAAA, disclose information about or contained in those documents or steps other than for the purpose of resolving the dispute.
- (s) Should any party to the dispute fail to comply with reasonable directions of the DCEC or the Board during the investigation of the dispute, the

Board may (at its discretion) immediately discontinue the Association's involvement in assisting in the resolution of the dispute and/or forward the details of the dispute to the appropriate authorities.

- (t) The Board and the DCEC will not accept or consider disputes or complaints from Supporter Members under this paragraph 9.

#### **10. Disputes and Complaints Involving the Code of Ethics**

- (a) Any complaint made against a Member or any dispute between Members involving the Code of Ethics will be dealt with in accordance with this Constitution, the Code of Ethics and the Complaints Handling Procedures.
- (b) The Board is only obliged to accept and consider complaints where the complainant is a Trade, Associate, Artist or Corporate Member of the Association.
- (c) The Board may, at its absolute discretion, consider complaints from Supporter Members and non-members.

#### **11. Disputes and Code of Ethics Committee**

- (a) The Board shall have the power to establish a sub-committee that shall be called the Disputes and Code of Ethics Committee (**DCEC**).
- (b) There shall be no fewer than two and no more than five people appointed to sit on the DCEC at any time.
- (c) The appointment may be for a period of time or for the purposes of determining a particular dispute or ethical issue.
- (d) At least one member of the DCEC shall be a Board member.
- (e) Where possible, at least one member of the DCEC shall be Aboriginal.
- (f) The DCEC may inform itself by any means it considers reasonable including but not limited to requiring written statements, requiring statutory declarations, receiving verbal evidence, taking a view, making any inspection, and appointing experts or representatives to obtain or give evidence.

- (g) The DCEC is not bound by the rules of evidence and may determine its own procedure except that in matters involving the Code of Ethics, it shall observe the current Complaints Handling Procedures issued by the Board and in disputes falling under paragraph 9, it shall follow the provisions of that paragraph.
- (h) Members shall appear in person before the DCEC and legal representation shall not be permitted except by leave of the DCEC or as set out in the Complaints Handling Procedures.
- (i) The Board shall have the power to charge any party to any proceedings of the DCEC with the costs incurred by the DCEC, the Board, or their nominees or representatives in the course of exercising the powers and functions provided by paragraphs 9, 10, 11 or 12. This shall include but not be limited to travelling expenses, the cost of accommodation and food and all professional fees.
- (j) Each Member agrees that before it may commence legal proceedings against another Member:
  - (i) it must exhaust its rights provided by paragraphs 9 and 10; and
  - (ii) the DCEC or the Board, as appropriate must have made a definitive determination on the issue.

## **12. Disciplinary Action by the Board**

- (a) If any Member wilfully refuses or neglects to comply with the provisions of this Constitution or does not obey or comply with any decision of the Board or DCEC or acts in a way which in the opinion of the Board contravenes the Code of Ethics or is otherwise prejudicial to the objects or interests of the Association, the Board may censure, suspend or expel the Member from the Association and remove its name from the Register of Members.
- (b) Before the Board makes any determination pursuant to paragraphs 9 and/or 10, it must request the DCEC to receive and consider the relevant material and make a recommendation to the Board as to the appropriate course of action.
- (c) Regarding paragraph 9, the DCEC shall ensure that the Member has notice of the allegations and shall give that Member an opportunity of giving, orally or in writing, any explanation or defence it may think fit.

- (d) Regarding paragraph 10, in dealing with the allegations, the Board and the DCEC shall follow the Complaints Handling Procedures.
- (e) If the Board proposes to expel, censure or suspend a Member from the Association, the Secretary of the Association shall notify the Member of the proposal and of the date on which the resolution for expulsion or disciplinary action (Resolution) is to be considered by the Board. The Member may by notice in writing lodged with the Secretary at least twenty four (24) hours before the time for holding the meeting at which the Resolution is to be considered by the Board, elect to address the Board. Any such address to the Board shall be limited to 20 minutes.
- (f) The Resolution must be passed by a majority of at least two-thirds of those Board members present and voting (such vote to be taken by ballot) whereupon the Member shall be expelled and its name removed from the Register of Members.

### **13. General Meetings**

- (a) All Meetings, other than the Annual General Meetings, shall be called General Meetings.
- (b) Any three Trade Members of the Board may, whenever they think fit, require that a General Meeting be convened.
- (c) Subject to the provisions of the Law relating to special resolutions and agreements for shorter notice, twenty five (25) days' notice at least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place the date and the hour of meeting and in case of special business the general nature of that business shall be given to such persons as are entitled to receive such notices from the Association.
- (d) All business shall be special that is transacted at a General Meeting and also all that is transacted at an Annual General Meeting, with the exception of: the consideration of the accounts, balance sheets and the report of the Board and Auditors; the election of officers and other members of the Board in the place of those retiring; and the appointment and fixing of the remuneration of the Auditors.
- (e) Changes to this Constitution and the Code of Ethics shall only be possible at an Annual General Meeting or General Meeting that has been



convened in accordance with this Constitution and that is conducted in accordance with this Constitution.

- (f) Changes to this Constitution and the Code of Ethics shall require a majority of two-thirds of all Trade Members and two-thirds of all Artist Members to vote in favour of the proposed change or changes.
- (g) The Board by a simple majority vote shall have the power to amend the Complaints Handling Procedures from time to time.

#### **14. Proceedings at General Meetings**

- (a) No business shall be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, twenty percent (20%) of the Members eligible to vote and are present shall be a quorum. For the purpose of paragraphs 14 (a) and (b), 'Members' includes a person attending as a proxy but does not include an Associate Member, Artist Member or a Supporter Member.
- (b) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved and in any other case it shall stand adjourned to the following day at the same time and place, or to such other day and at such other time and place as the Board may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Members eligible to vote which are present being not less than ten percent (10%) of those Members, shall be a quorum.
- (c) The President shall preside as chairperson at every General Meeting, or if there is no President, or if s/he is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act, the Vice-President shall be the chairperson or if the Vice-President is not present or is unwilling to act then the Members present shall elect one of their number to be chairperson for the meeting.
- (d) The chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty (30) days or more, notice of the

adjourned meeting shall be given as in the case of an original meeting. Except as provided above, it shall not be necessary to give any notice of an adjournment for the business to be transacted at an adjourned meeting.

- (e) At any General Meeting a resolution put to the vote of the meeting shall be decided on a poll.
- (f) A poll shall be taken forthwith in such a manner as the chairperson directs and the result of the poll shall be the resolution of the meeting.
- (g) In the case of equality of votes on a poll, the chairperson of the meeting shall be entitled to a second and casting vote.

## **15. Member Voting and Proxies**

- (a) A Member eligible to vote may vote in person or by proxy or by attorney and shall have one (1) vote.
- (b) For the purpose of the above, a Member shall be eligible to vote if its membership falls in a category of membership with voting rights and its membership has been approved and confirmed at the Board meeting held immediately prior to the General Meeting at which a Member is to vote.
- (c) Where an individual Member is a full-time employee of an organisation which is a Corporate Member, either the organisation or the individual may vote but not both. In the event that both cast a vote, only the vote of the Corporate Member shall be counted.
- (d) A Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his/her trustee or by such other person as properly has the management of his/her estate, and any such trustee or other person may vote by proxy or attorney.
- (e) No Member shall be entitled to vote at any General Meeting if its annual subscription fee shall be more than three (3) months in arrears at the date of the meeting.
- (f) The instrument appointing a proxy shall be in writing under the hand of the appointor or of its attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. The signature of the appointor or its attorney shall be witnessed by a person other than the proxy. The instrument appointing a proxy shall be deemed to confer authority to

demand a poll. A Member shall be entitled to instruct its proxy to vote in favour of or against any proposed resolutions. Unless otherwise instructed, the proxy may vote as it thinks fit.

- (g) The instrument appointing a proxy may be in the form set out in Appendix 2 or in a common or usual form.
- (h) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority or other authority shall be deposited at the registered office of the Association or at such other place as is specified for that purpose in the notice convening the meeting, not less than forty eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty four (24) hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.
- (i) A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of such death, unsoundness of mind or revocation as aforesaid has been received by the Association at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

## **16. Aboriginal Cultural Council**

- (a) The Aboriginal Members of the Association shall be empowered to elect an Aboriginal Cultural Council. The election of the Aboriginal Cultural Council will be held in conjunction with the board elections at the Annual General Meeting.
- (b) The Association shall rely on its Aboriginal Cultural Council to assist in establishing ethical guidelines, rules and policies relating to cultural and authenticity issues together with arbitration of associated disputes.
- (c) The Aboriginal Cultural Council will be empowered to increase its membership at its own discretion. All appointed Members to the Council must be Aboriginal.

## **17. The Board and its Officers**

- (a) The officers of the Association shall consist of a President, a Vice-President, a Secretary and an Honorary Treasurer, including if at all possible no less than one person who is Aboriginal, all of whom must be Members.
- (b) The Board shall consist of the officers in paragraph 17 (a) and not less than one (1) other person who is a Member.
- (c) The maximum number of Trade Member and Corporate Member Board members shall be six (6) in total.
- (d) Aboriginal owned art centre Trade or Corporate Members; gallery or dealer Trade or Corporate Members whose sales sourced from Aboriginal owned art centres comprise of over 50% in value of that Member's sales; and Corporate Members which represent groups of Aboriginal owned art centres or whose business is the representation or support of Aboriginal owned art centres shall hold a maximum of one (1), in total, Trade Member or Corporate Member Board position.
- (e) Only Trade Members and Corporate Members shall be entitled to vote on Trade Member and Corporate Member Board positions.
- (f) The maximum number of Art Member Board members shall be three (3).
- (g) Ideally, the Art Member Board members shall represent a broad spectrum of the Aboriginal artist community and be comprised of an Artist Member from a remote area, an Artist Member who sells the majority of their artworks through an Aboriginal owned art centre and an urban based Artist Member.
- (h) Only Artist Members shall be entitled to vote on the Artist Member Board positions.
- (i) The final composition of the Artist Member Board positions shall be decided by the President, the Vice-President and the Secretary, taking into account, but not being bound by, the votes cast by Artist Members.
- (j) The Board shall, at the Board's discretion, include a Chief Executive Officer or interim Chief Executive Officer.
- (k) For the avoidance of doubt, the maximum number of Board members, including the officers shall be ten (10), with a maximum of six (6) Trade

Members or Corporate Members, a maximum of three (3) Artist Members and the Chief Executive Officer.

- (l) Associate Members and Supporter Members are not eligible to stand for election to the Board unless with the prior approval of the Board at the time.
- (m) Nominations for all Board positions must be received and seconded a minimum of one month prior to the Annual General Meeting at which the Board will be elected by Members eligible to vote.
- (n) Nominations for Board positions will only be accepted on the form or forms issued by the Board from time to time.
- (o) All nominations for Board positions must be accepted by the person nominated for election a minimum of seven (7) days prior to the Annual General Meeting.
- (p) A Member may not be the President for more than five (5) consecutive years. Having served five years, a Member must step down from the presidency for no less than one year before presenting themselves for re-election.
- (q) The Board shall have power at any time, and from time to time, to appoint any person to the Board to fill a casual vacancy. Any officer or other member of the Board so appointed shall hold office only until the next Annual General Meeting.
- (r) The Board may by a majority vote remove a Board member from the Board after following the procedures in this paragraph 17 (r):
  - (i) The Board may by a majority vote determine that a Board member is not performing their Board duties to the Board's satisfaction;
  - (ii) In the event of such a vote, the Board member in question shall be put on probation. The notice of probation shall take the form of a written warning from the Secretary or, if the Secretary is the subject of the warning, the President, giving the Board member three (3) months from the date of the notice to improve his or her performance to the level required by the Board.
  - (iii) If, after the three (3) months expires, the Board determines that the Board member's performance remains unsatisfactory, the Board may, by majority vote, remove the Board member from the Board.

- (s) Board members are required to attend a minimum of 80% of all Board Meetings in any six (6) month period (Required Board Attendance). Failure to meet the Required Board Attendance is a breach of the Board member's duty to the Association. If a Board member fails to reach the Required Board Attendance, the Secretary, or if the Secretary is in breach, the President, may issue a notice in writing to the Board member advising them of the breach and requiring them to attend all Board meetings in the six (6) months following the warning. If the Board member fails to attend all Board meetings in that six (6) month period, the Board may, by majority vote, remove the Board member from the Board.
- (t) Where a Board member is removed from the Board pursuant to paragraph 17 (r) or 17 (s):
  - (i) The Board member shall promptly sign all such forms required to give effect to the removal, including where applicable resignation as a Director; and
  - (ii) The Board member shall not be eligible for re-election to the Board for a minimum of three (3) years after the removal date.
- (u) In exercising its powers under paragraph 17 (s), the Board shall take into account genuine reasons for absence such as medical conditions and compassionate issues. However, the Board member has the obligation to, where possible, notify the Secretary in advance, in writing of any extenuating circumstances leading to absences from Board meetings.
- (v) A Board member's position shall automatically become vacant if he or she:
  - (i) ceases to be a member of the Board by virtue of the Law;
  - (ii) being the representative of an incorporated Member, sells their business (provided that the member of the Board is not also an individual Member);
  - (iii) is no longer employed by the incorporated Member that he/she represents (provided that the member of the Board is not also an individual Member);
  - (iv) becomes bankrupt or makes any arrangement or composition with his/her creditors generally;

- (v) 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;
- (vi) resigns office by notice in writing to the Association;
- (vii) notwithstanding the provisions of paragraph 17 (s), is for more than six (6) months absent without permission of the Board from meetings of the Board held during that period;
- (viii) holds any office of profit under the Association, excluding the office of (Interim) Chief Executive Officer;
- (ix) ceases to be a Member;
- (x) is expelled from the Association pursuant to paragraph 12.

## **18. Powers and Duties of the Board**

- (a) The Board shall have the general management of the business and funds of the Association and may pay all expenses incurred in promoting and registering the Association and may exercise all such powers of the Association as are not, by Law or by the rules required to be exercised by the Association in general meetings, subject only to any provisions of this Constitution and of Law. No rule made by the Association in General Meeting shall invalidate any prior act of the Board or its directors that would have been valid if that rule had not been made.
- (b) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Association, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two (2) members of the Board or in such other manner as the Board from time to time determines.
- (c) The Board shall cause minutes to be made:
  - (i) of all appointments of officers and servants;
  - (ii) of names of members of the Board present at all meetings of the Association and of the Board; and
  - (iii) of all proceedings at meetings of the Association and of the Board.

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

## **19. Proceedings of the Board**

- (a) The Board may meet together in person or by proxy or by conference telephone call, video link-up, or any other electronic means for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A member of the Board may at any time and the Secretary shall on the requisition of a member of the Board, summon a meeting of the Board.
- (b) A member of the Board shall not vote in respect of any contract or proposed contract with the Association in which he/she is interested or conflicted, or any matter arising thereout, and if he/she does so vote that vote shall not be counted.
- (c) The quorum necessary for the transaction of the business of the Board shall be four.
- (d) The continuing members of the Board may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to these regulations as the necessary quorum of the Board, the continuing member or members may act for the purpose of increasing the number of members of the Board to that number or of summoning a General Meeting, but for no other purpose.
- (e) The President shall preside as chairperson at every meeting of the Board, or if there is no President or if at any meeting s/he is not present within ten (10) minutes after the time appointed for holding the meeting, the Vice-President shall be chairperson or if the Vice-President is not present at the meeting then the Board members may choose one of their number to be chairperson of the meeting.
- (f) The Board may in its discretion establish one or more sub-committee(s) to further the objects of the Association as defined herein.
  - (i) The members of any such sub-committees shall be appointed by the Board. A member of a sub-committee need not be a Member of the Association.



- (ii) At least one Board member shall sit on each sub-committee.
- (iii) Any sub-committee so formed shall perform an advisory function only. All decisions with respect to the activities of the sub-committees shall vest either in the Board or in the Members, whichever applies.
- (g) Notwithstanding paragraph 19 (f) (iii), the Board may delegate any of its powers to one or more sub-committees; any sub-committee so formed shall in the exercise of the powers so delegated conform to any regulations that maybe imposed on it by the Board.
- (h) A sub-committee may elect a chairperson of its meetings; if no such chairperson is elected, or if at any meeting the chairperson is not present within ten (10) minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairperson of the meeting.
- (i) Except as otherwise set out in this Constitution, a sub-committee may meet and adjourn as it thinks proper.
- (j) All acts done by any meetings of the Board or of a sub-committee or by any person acting as a member of the Board or sub-committee shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such member of the Board or sub-committee or person acting as aforesaid or that the members of the Board or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the Board or sub-committee.
- (k) A resolution in writing signed by all the members of the Board for the time being entitled to receive notice of a meeting of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more members of the Board.

## **20. Accounts and Audit**

- (a) The Board shall keep proper accounting records. The Board shall cause to be made out and laid before each Annual General Meeting a balance sheet and profit and loss account made up to date not more than five (5)

months before the date of the meeting accompanied by a copy of the Auditor's report thereon as required by the Law.

- (b) Subject to any reasonable restrictions that may be imposed by the Board as to the time and manner of inspection, the accounts shall be open to the inspection of the Members.
- (c) A properly qualified Auditor shall be appointed and its remuneration fixed and duties regulated in accordance with the Law and this Constitution.

## **21. Notices**

- (a) A notice may be given by the Association to any Member either personally or by sending it by post to its registered address, or to an address supplied by it to the Association for the giving of notices, or by facsimile transmission or by e-mail. Where a notice is sent by post, service of the notice shall be deemed to be effected in the case of a notice of a meeting on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post. Where a notice is sent by facsimile transmission or e-mail, service of the notice shall be deemed to be effected on the date of transmission provided that there is reasonable proof indicating that the communication has been received.
- (b) Notice of every General Meeting shall be given to:
  - (i) every Member except those Members who have not supplied to the Association an address for the giving of notices; and
  - (ii) the Auditor for the time being of the Association.
- (c) No other person shall be entitled to receive notices of General Meetings.

## **22. Indemnity**

To the extent permitted by Law and/or any other applicable laws, every member or officer of the Board shall be indemnified by the Association against any liability arising out of the execution of the duties of office which it incurs in defending any proceedings, whether civil or criminal, in which judgment is given in its favour or in which it is acquitted. The

indemnity shall not apply where the member or officer of the Board has either been negligent or has committed a default or breach of trust.

NOTWITHSTANDING anything contained in this Constitution, the Association may adopt any by-laws standing orders or constitutional rules as may be passed from time to time at any General Meeting.

Dated the 9<sup>th</sup> day of September 2016.

## APPENDIX 1

### ***CODE OF ETHICS AND BUSINESS PRACTICE***

#### ***Responsibility to the artists, the art and the community***

##### ***A Member must:***

- Conduct its affairs in an exemplary manner and with regard to the Aboriginal arts industry and the Aboriginal artists it represents;
- Treat all artists fairly and ensure equitable and timely returns to artists;
- Exhibit honesty and integrity in its dealings with the public, artists, Members, other dealers and other industry organisations;
- Be responsible for the proper disclosure of information relating to the authorship and provenance of any work exhibited;
- Refuse to deal with anyone who violates Aboriginal copyright or improperly appropriates Aboriginal imagery;
- Respect the role of Aboriginal community arts organizations while recognising an individual artist's right to make their own career choices and informed financial decisions;
- Work toward offering high quality uniform documentation;
- Abide by the Aboriginal Art Code; and
- Abide by the following guidelines and principles for contracting with artists:
  - When contracting with an artist, a Member must ask the artist whether there is any reason why the Member should not work with them and whether the artist is exclusively contracted to another gallery or dealer.
  - If the Member is unsure as to the veracity of the artist's response, particularly where the Member suspects the artist may be contracted in some form or another elsewhere, the Board recommends the Member have the artist sign a declaration to the effect that the artist is free and able to contract with the Member. Standard forms in multiple languages are available from the Secretary.
  - If the Member is aware that the artist works primarily with another Trade, Associate or Corporate Member, the Member shall contact that Trade, Associate or Corporate Member and advise them that the Member and the artist wish to contract.
  - Where there is contact between Members regarding contracting with an artist and to assist in resolving any dispute or disagreement, both Members shall act in good faith, ensuring they first consider the artist and the artist's desires and always bearing in mind the overarching philosophy of the Association which recognises an individual artist's right to make their own career choices and informed financial

decisions. In the event that agreement cannot be reached and a Member wishes to raise a complaint, the dispute handling and resolution procedures contained in paragraphs 9, 10, 11 and 12 of the Constitution of the AAAA will be applied by the Board.

- The Board recommends strongly against Trade, Associate or Corporate Members entering into exclusive agreements with artists.

**A Member of AAAA must not:**

- Hold itself out as representing an artist without an agreement with that artist or the artist's agent;
- Act in any way that may undermine exhibitions at another Member's gallery;
- Make any inflammatory or potentially damaging public comments against any other Members of AAAA or the AAAA itself without having first explored all avenues for dispute and complaint resolution as set out in the Constitution;
- Enter Aboriginal land without following the appropriate protocols; nor
- Act in any way that will bring discredit on the AAAA or bring the AAAA and/or its Members into disrepute.

APPENDIX 2

**PROXY FORM**

I.....of .....

being a member of .....

hereby appoint .....of .....

or failing him/her .....of .....

as proxy to vote for me on my behalf at the annual or general (as the case may be) meeting of the Association to be held on the day of and at any adjournment thereof.

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

*(\*Strike out whichever is not desired.)*

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Signed .....

this ..... day of .....20..... .

**Note:** *In the event of the Member desiring to vote for or against any resolution it shall instruct its proxy accordingly, unless otherwise instructed, the proxy may vote as it thinks fit.*