

ALLIANCE FRANCAISE DE SYDNEY  
CULTURAL FOUNDATION LIMITED  
A.C.N. 630 718 937

(A public company limited by guarantee)

Constitution

## Contents

1.	Interpretation .....	1
2.	Name of the Company .....	3
3.	Type of Company .....	3
4.	Limited Liability of Member .....	3
5.	Objects and powers .....	3
6.	Membership .....	4
7.	No profits for the Member.....	4
8.	Convening of general meetings.....	5
9.	Notice of general meetings.....	6
10.	Admission to general meetings .....	7
11.	Quorum at general meetings .....	8
12.	Chair of general meetings.....	8
13.	Conduct of general meetings .....	9
14.	Resolution of Member without meeting.....	10
15.	Voting rights .....	10
16.	Board of Directors .....	10
17.	Vacation of office of Director .....	11
18.	Remuneration of Directors .....	11
19.	Conflicts of interest .....	12
20.	Powers and duties of Directors .....	13
21.	Board meetings.....	14
22.	Convening of meetings of Directors .....	14
23.	Notice of Board meetings .....	14
24.	Quorum at Board meetings.....	15
25.	Board Chair .....	16
26.	Decisions of Directors .....	16
27.	Written resolutions.....	16
28.	Board Committees .....	17
29.	Alternate Directors .....	18
30.	Validity of acts.....	19
31.	Executive officers .....	19
32.	Accounts; Inspection of accounts; Audit.....	21
33.	Seal .....	21

<b>34.</b>	<b>Winding up and revocation of DGR status.....</b>	<b>22</b>
<b>35.</b>	<b>Minutes and records.....</b>	<b>23</b>
<b>36.</b>	<b>Indemnity and insurance .....</b>	<b>24</b>
<b>37.</b>	<b>Notices.....</b>	<b>25</b>
<b>38.</b>	<b>By-laws .....</b>	<b>27</b>
<b>39.</b>	<b>General .....</b>	<b>27</b>

## 1. Interpretation

---

### 1.1 Definitions

In this Constitution, unless the context requires otherwise:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)*.

**Alternate Director** means a Director appointed in accordance with clause 29.

**Board** means the board of Directors of the Company.

**Board Chair** means the President or other nominated chair of a Board meeting in accordance with clause 25.

**Board Committee** means a committee of Directors formed in accordance with clause 28.  
**Committee member** has a corresponding meaning.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Sydney, New South Wales.

**Chair** means the chair of a general meeting appointed in accordance with clause 12.

**Company** means Alliance Française de Sydney Cultural Foundation Limited.

**Constitution** means this Constitution.

**Corporations Act** means *Corporations Act 2001 (Cth)*.

**Director** means a director of the Company.

**General Manager** means the person holding that office under this Constitution.

**Member** means Alliance Française de Sydney.

**Representative**, in relation to a body corporate, means a representative of the body corporate appointed under section 250D of the Corporations Act.

**Seal** means any common seal, duplicate seal, seal or certificate seal of the Company.  
Signed and signature include verifiable electronic signature.

**Secretary** means the person holding that office under this Constitution.

**Special Resolution** means a resolution that has been passed by the Member recording the resolution and signing the record.

### 1.2 General

In this Constitution, unless the context requires otherwise:

- (a) words in the singular include the plural and vice versa;

- (b) a reference to a gender includes the other gender;
- (c) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (d) a reference to any clause or schedule is to a clause or schedule of this Constitution;
- (e) a reference to any legislation or to any provision of any legislation includes any modification, consolidation or re-enactment of it, any legislative provisions substituted for it and all regulations and statutory instruments issued under it;
- (f) the words 'including', 'such as', 'for example' and the like are not, and should not be interpreted to be, words of limitation, unless explicitly stated otherwise;
- (g) a reference in a clause in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being;
- (h) the word person means a natural person and any partnership, association, body or entity whether incorporated or not;
- (i) the words writing and written include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form, including email and electronic communications via a website;
- (j) unless the contrary intention appears, an expression in a clause that deals with a matter dealt with by a provision of the Corporations Act, has the same meaning as in that provision and an expression in a clause that is defined in section 9 of the Corporations Act has the same meaning as in that section;
- (k) where this Constitution provides that a person or body may do a particular act or thing and the word "may" is used, the act or thing may be done at the discretion of the person or body;
- (l) a requirement for something to be carried out in writing will be satisfied if the matter in question is carried out in some other lawful manner that is approved by the Directors; and
- (m) where communication from the Member to the Company must be 'signed' by the Member, in addition to any other methods permitted by law, the Member may sign in any manner that allows the Directors to be satisfied, acting reasonably, that the communication is from the Member, including by using an electronic signature.

### **1.3 Replaceable Rules**

The provisions of this Constitution displace the replaceable rules (but not replaceable rules which mandatorily apply to a public company) contained in the Corporations Act.

### **1.4 Headings**

Headings do not form part of or affect the construction or interpretation of this Constitution.

## 2. Name of the Company

---

The name of the Company is "Alliance Française de Sydney Cultural Foundation Limited ACN 630 718 937", or if the name is lawfully changed in accordance with the Corporations Act and this Constitution, that name.

## 3. Type of Company

---

The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

## 4. Limited Liability of Member

---

- 4.1 The Member must contribute an amount not more than \$10.00 to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:
- (a) debts and liabilities of the Company;
  - (b) the costs, charges and expenses of winding up; and
  - (c) any adjustment of the rights of the contributories among Members,
- to the extent such amounts exceed the Company's assets at the time of winding up.
- 4.2 The liability of the Member is limited to making such contribution and no more.

## 5. Objects and powers

---

- 5.1 The charitable purposes of the Company are the promotion of French and Francophone culture in the Greater Sydney region and throughout Australia by the promotion of French literature, music, performing arts, visual arts, craft, design, film video, television, radio and community arts.
- 5.2 The Company can only exercise the powers in section 124(1) of the Corporations Act to:
- (a) carry out the objects of the Company set out in clause 5.1; and
  - (b) do all things incidental or convenient in relation to the attainment of an object under clause 5.1.
- 5.3 The Company has no political affiliation and must act at all times without any form of discrimination.
- 5.4 The Company forms part of a network of Alliance Française organisations around the world with similar objects, the principal member of the network being Alliance Française de Paris, itself a not-for-profit organisation having its registered office at 101 Boulevard Raspail,

Paris, 75006 France. Whilst operating independently and pursuant to relevant Australian laws, the Company also adheres to the principles and recommendations of the **Fondation Alliance Française**, having its registered office at 101 Boulevard Raspail, Paris, 75006, France.

## 6. Membership

---

The sole member of the Company is Alliance Française de Sydney. The Company is a closely-held subsidiary of Alliance Française de Sydney.

## 7. No profits for the Member

---

### 7.1 Transfer of income or property

Subject to the operation of clause 7.2, the assets and income of the Company shall be applied solely in furtherance of the principal purposes of the Company and its objects and no portion of the income or assets of the Company may be paid or transferred, directly or indirectly to the Member.

### 7.2 Payments, services and information

Nothing in clause 7.1 prevents the payment in good faith of:

- (a) any expenses incurred on behalf of the Company;
- (b) remuneration to any officers or employees of the Company for services actually rendered to the Company and to directors for professional services other than acting as a Director rendered to the Company which have been approved by the Board;
- (c) an amount to the Member in return for any services actually rendered to the Company (whether by the Member or any corporation or partnership in which the Member has an interest) or for goods supplied in the ordinary and usual course of business;
- (d) reasonable and proper interest on money borrowed from the Member;
- (e) reasonable and proper rent for premises let by the Member to the Company; or
- (f) by way of grant (or similar contribution) awarded in furtherance of the charitable purposes of the Company set out in clause 5.1.

### 7.3 Public Fund

- (a) The Company may establish and maintain a public fund to receive tax deductible donations, philanthropic gifts, grants, scholarships and other such monies gifted in support of the Company Objects set out in clause 5.1.
- (b) Donations, philanthropic gifts and other monies gifted to the public fund will be deposited into the public fund listed on the Register of Cultural Organisations. These monies will be kept separate from the other funds of Alliance Française de Sydney and will only be used to further the principal purpose of the Company. Investment of

monies in this fund will be made in association with guidelines for public funds as specified by The Australian Taxation Office.

- (c) The fund will be administered by the Board or a Board Committee, 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 Alliance Francaise de Sydney.
- (d) No monies/assets in this fund will be distributed to the Member or office bearers of Alliance Francaise de Sydney, except as reimbursement of out-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services or as payment for the provision of services other than as a Director for work performed for the Company that has been approved by the Board.
- (e) 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.
- (f) Receipts for gifts to the public fund must state:
  - (i) the name of the public fund and that the receipt is for a gift made to the public fund;
  - (ii) the Australia Business Number of the Company; and
  - (iii) the fact that the receipt is for a gift; and
  - (iv) any other matter required to be included on the receipt pursuant to the requirements of the *Income Tax Assessment Act 1997* (Cth).
- (g) The Company must comply with any rules that the Treasurer or the Federal Minister responsible for the Arts make to ensure that gifts made to the public fund will be only used for the Company's principal purpose. The Company must provide to the Department responsible for the administration of the Register of Cultural Organisations statistical information on the gifts made to the public fund every 6 months.
- (h) The public will be invited to contribute to the fund.

## **8. Convening of general meetings**

---

- 8.1 For as long as the Company is registered as a charity with the Australian Charities and Not-for-profits Commission or its successor, and for as long as the law permits or requires, the Directors:
- (a) unless the Corporations Act otherwise requires a general meeting for a particular resolution to be passed, may determine whether or not to hold general meetings including annual general meetings;
  - (b) must ensure that the Australian Charities and Not-for-profits Commission



Governance Standards, in particular Governance Standard 2 relating to accountability to Members, are complied with; and

- (c) must ensure that if the Company does hold a general meeting, it does so in accordance with this Constitution and the Corporations Act despite the fact that the provisions of the Corporations Act dealing with general meetings may not be directly applicable to the Company.
- 8.2 If there is any inconsistency between the Corporations Act and this Constitution with respect to the calling and holding of general meetings then, to the extent permitted by law, the provisions of this Constitution will prevail.
- 8.3 A general meeting may be convened by:
- (a) the Directors by resolution of the Board;
  - (b) the Member in accordance with the Corporations Act (including sections 249D, 249E, and 249F); or
  - (c) the Court in accordance with the Corporations Act (including section 249G).
- 8.4 Subject to clause 8.6, the Directors may postpone, cancel or change the venue for a general meeting by giving notice not later than 5 Business Days before the time at which the general meeting was to be held to the Member and to each person who is at the date of the notice:
- (a) a Director; or
  - (b) an auditor of the Company.
- 8.5 A notice postponing or changing the venue for a general meeting must specify the date, time and place of the general meeting.
- 8.6 A general meeting convened under section 249D of the Corporations Act may not be postponed beyond the date by which section 249D requires it to be held and may not be cancelled without the consent of the Member.
- 8.7 A general meeting may be held in 2 or more places linked together by any technology that gives the participants as a whole in those places a reasonable opportunity to participate in proceedings, enables the Chair to be aware of proceedings in each place, and enables the Member to vote on a show of hands and on a poll.

## **9. Notice of general meetings**

---

- 9.1 Subject to this Constitution, notice of a general meeting must be given within the time limits prescribed by the Corporations Act to the Member and to each person who is at the date of the notice:
- (a) a Director; or
  - (b) an auditor of the Company.

- 9.2 A notice of a general meeting must specify the date, time and place of the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this) and, except as provided in clause 9.3, state the general nature of the business to be transacted at the meeting (including the text of any resolutions to be proposed at the meeting) and any other matters required under the Corporations Act.
- 9.3 It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the consideration of the annual financial report and the reports of the Directors and auditor, the election of Directors or the appointment or fixing of the remuneration of the auditor of the Company.
- 9.4 A person may waive notice of any general meeting by notice in writing to the Company.
- 9.5 The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this clause 9 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
- (a) the non-receipt or failure occurred by accident or error; or
  - (b) before or after the meeting, the person:
    - (i) has waived or waives notice of that meeting under clause 9.4; or
    - (ii) has notified or notifies the Company of the person's agreement to that act, matter, thing or resolution by notice in writing to the Company.
- 9.6 A person's attendance at a general meeting:
- (a) waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
  - (b) waives any objection that person may have to the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting or in clause 9.3, unless the person objects to considering the matter when it is presented.

## **10. Admission to general meetings**

---

- 10.1 The Chair of a general meeting may refuse admission to a person, or require that person to leave and remain out of the meeting, if that person:
- (a) has a camera, tape recorder or video camera, smartphone or other audio or visual recording device that they use or intend to use to record and/or to stream or otherwise broadcast the meeting;
  - (b) has a placard or banner;
  - (c) has an article which the Chair considers to be dangerous, offensive or liable to cause disruption;

- (d) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
  - (e) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
  - (f) refuses to comply with a direction or order of the Chair or otherwise breaches conditions of attendance at the meeting, including a direction that mobile phones be switched off during the meeting.
- 10.2 A person who is entitled to receive notice of a meeting or who is requested by the Directors or the Chair to attend a general meeting is entitled to be present.

## **11. Quorum at general meetings**

---

- 11.1 No business may be transacted at any general meeting, except the election of a Chair and the adjournment of the meeting, unless a quorum is present when the meeting proceeds to business and remains present throughout the meeting.
- 11.2 A quorum consists of the Member who is present at the meeting in person, by proxy, attorney or Representative and five (5) Directors.
- 11.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) where the meeting was convened by, or at the request of, the Member, the meeting must be dissolved; or
  - (b) in any other case:
    - (i) the meeting stands adjourned to the day, time and place, as 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
    - (ii) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

## **12. Chair of general meetings**

---

- 12.1 The Board Chair must preside as Chair at each general meeting if present within 10 minutes after the time appointed for the meeting and willing to act.
- 12.2 The Directors present at a general meeting may elect a person present to chair the meeting if:
- (a) there is no Board Chair;
  - (b) the Board Chair is not present within 10 minutes after the time appointed for the meeting; or
  - (c) the Board Chair is present within that time but is not willing to act as chair of the

meeting.

12.3 Subject to clauses 12.1 and 12.2, if at a general meeting:

- (a) a Board Chair has not been elected by the Directors; or
- (b) an elected chair is not available or is not willing to act as a chair of the meeting (or part of the meeting),

the Member must appoint as Chair of the meeting another person who is present and willing to act.

### **13. Conduct of general meetings**

---

13.1 The Chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in their opinion necessary or desirable for:

- (a) proper and orderly debate or discussion, including limiting the time that a person present may speak on a motion or other item of business before the meeting; and
- (b) the proper and orderly casting or recording of votes at the general meeting, whether on a show of hands or on a poll, including the appointment of scrutineers.

13.2 Subject to sections 250S and 250T of the Corporations Act, the Chair of a general meeting may at any time they consider it necessary or desirable for the proper and orderly conduct of the meeting:

- (a) terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote; or
- (b) allow debate or discussion on any business, question, motion or resolution being considered by the meeting to continue.

13.3 Subject to sections 250S and 250T of the Corporations Act, the Chair of a general meeting may:

- (a) refuse to allow debate or discussion on any business, question, motion or resolution which is not within the business referred to in the notice of meeting; and
- (b) refuse to allow any amendment to be moved to a resolution of which notice has been given under clause 9.1.

13.4 A decision by a Chair under clauses 13.1, 13.2 or 13.3 is final.

13.5 The Chair of a general meeting may at any time during the course of the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting.

- 13.6 If the Chair exercises their right under clause 13.5, it is in the Chair's sole discretion whether to seek the approval of the Member to the adjournment.
- 13.7 If the Chair does seek the Member's approval, the Chair must adjourn the meeting if the Member agrees or directs that the Chair must do so.
- 13.8 The Chair's rights under clause 13.5 are exclusive and, unless otherwise required by the Chair, no vote may be taken or demanded by the Member present in respect of any adjournment.
- 13.9 No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 13.10 Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of the adjournment.
- 13.11 Subject to clause 13.6, where a meeting is adjourned, the Directors may postpone, cancel or change the venue of the adjourned meeting.

## **14. Resolution of Member without meeting**

---

- 14.1 The Directors may put a resolution to the Member to pass as a resolution without a general meeting being held.
- 14.2 The Directors must notify the auditor (if any) as soon as possible that a resolution has or will be put to the Member without a meeting and set out the wording of the resolution.
- 14.3 A resolution is passed if the Member signs the proposed resolution.
- 14.4 This clause 14 also applies to Special Resolutions.

## **15. Voting rights**

---

- 15.1 The Member has one vote.
- 15.2 A body corporate member shall nominate one Representative to vote on its behalf.
- 15.3 The Member's Representative will vote as authorised by the Board of the Member.

## **16. Board of Directors**

---

### **16.1 Directors**

- (a) The Board of the Company shall consist of the directors of Alliance Française de Sydney ex officio, unless otherwise resolved by Special Resolution.
- (b) The minimum number of Directors is 5.

- (c) The maximum number of Directors is to be fixed by the Directors, but must not be more than 9 unless otherwise resolved by the Member. The Directors must not determine a maximum which is less than the number of Directors in office at the time the determination takes effect. If the number of Directors of Alliance Française de Sydney is varied, the number of Directors of the Company shall be varied by way of resolution of the Board of the Company accordingly.

## **16.2 Officer-bearers**

- (a) The Company will have the following officer-bearers of the Company:
  - (i) the President;
  - (ii) one or more Vice-President(s);
  - (iii) an Honorary Treasurer.
- (b) The officer-bearers of Alliance Française de Sydney will assume the same offices of the Company.

## **17. Vacation of office of Director**

---

The office of a member of the Board shall become vacant if the Director:

- (a) ceases to be a Director of Alliance Française de Sydney;
- (b) is removed as a Director by the Member.

## **18. Remuneration of Directors**

---

- 18.1 Directors, including Alternate Directors, shall not be remunerated out of the funds of the Company for performing the functions of a Director of the Company. With the approval of the Board, individual Directors may be paid for professional services they provide to the Company at the request of the Board in relation to particular matters and/or disbursements arising in relation thereto that they are able to provide due to their particular skills for the benefit of the Company.
- 18.2 Directors may be paid travelling and other expenses properly incurred by them in connection with the affairs of the Company, including attending and returning from general meetings of the Company or meetings of the Board or of Board Committees.
- 18.3 Notwithstanding anything else in this Constitution, no payment of any kind can be made by the Company to a Director unless that payment is approved by:
  - (a) the Directors; or
  - (b) such other person or persons to whom the Directors may have delegated such authority in a way consistent with clause 28.

## 19. Conflicts of interest

---

- 19.1 A Director is not disqualified merely because of being a Director from being employed by the Company or acting in any professional capacity, other than auditor, on behalf of the Company.
- 19.2 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a Board meeting (or that is proposed in a circular resolution):
- (a) to the other Directors; or
  - (b) if all of the Directors have the same conflict of interest, to the Member.
- 19.3 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 19.4 Each Director who has a material personal interest in a matter that is being considered at a Board meeting (or that is proposed in a circular resolution) must not, except as provided under clause 19.5:
- (a) be present at the meeting while the matter is being discussed; or
  - (b) vote on the matter.
- 19.5 If clause 19.4 operates to the effect that there are not enough Directors to form a quorum for a Board meeting, one or more Directors (including those who have a material personal interest) may call a general meeting and the general meeting may pass a resolution to deal with the matter.
- 19.6 A Director may still be present and vote if:
- (a) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a director of the Company;
  - (b) their interest relates to an indemnity payment by the Company, or any contract relating to an indemnity that is allowed under the Corporations Act;
  - (c) the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter; or
  - (d) the Directors who do not have a material personal interest in the matter pass a resolution that:
    - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
    - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

- 19.7 The Directors may make by-laws setting out the policies regarding the disclosure of interests that a Director, and any person deemed by the Directors to be related to or associated with the Director, may have in any matter concerning the Company or a related body corporate.
- 19.8 Any by-laws made under clause 19.7 bind all Directors and apply in addition to any obligations imposed on the Directors by the Corporations Act and the ACNC Act to disclose interests to the Company.
- 19.9 Subject to clauses 5 and 7, the Directors are expressly authorised to act in the best interests of the holding company, Alliance Française de Sydney, pursuant to section 187 of the Corporations Act.

## **20. Powers and duties of Directors**

---

- 20.1 The Directors are responsible for managing the business of the Company and may exercise to the exclusion of the Company in general meeting all the powers of the Company which are not required by the Corporations Act or this Constitution to be exercised by the Company in general meeting.
- 20.2 Without limiting the generality of clause 20.1, the Directors may exercise all the powers of the Company to borrow or otherwise raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.
- 20.3 The Directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments or other documents must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the Company.
- 20.4 The Directors may pay out of the Company's funds all expenses of the promotion, formation and registration of the Company and the vesting in it of the assets acquired by it.
- 20.5 The Directors may:
- (a) appoint or employ any person to be an officer, agent or attorney of the Company for the purposes, for the period and on the conditions as they think fit;
  - (b) grant a power of attorney that may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the Directors think fit.
  - (c) resolve to delegate any of their powers to an officer, agent or attorney and the officer, agent or attorney must exercise the powers delegated in accordance with any directions of the Directors;
  - (d) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
  - (e) subject to any contract between the Company and the relevant officer, agent or attorney, remove or dismiss any officer (excluding a Director of the Company), agent



or attorney of the Company at any time, with or without cause.

- 20.6 The Directors may make and approve bylaws, regulations and rules for the operation of the Company and interpretation and implementation thereof.
- 20.7 The Directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in Governance Standard 5 of the regulations made under the ACNC Act which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
  - (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in clause 5.1;
  - (c) not to misuse their position as a Director;
  - (d) not to misuse information they gain in their role as a Director;
  - (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 19;
  - (f) to ensure that the financial affairs of the Company are managed responsibly; and
  - (g) not to allow the Company to operate while it is insolvent.

## **21. Board meetings**

---

- 21.1 The Directors may hold meetings for the conduct of business and adjourn and otherwise regulate their meetings as they think fit.
- 21.2 Subject to the Corporations Act, the Directors may hold Board meetings by using any technology that is agreed to by all of the Directors. Such agreement may be a standing one and a Director may only withdraw their consent within a reasonable period before the meeting.

## **22. Convening of meetings of Directors**

---

- 22.1 A Director may, whenever the Director thinks fit, convene a Board meeting.
- 22.2 The Secretary must, on the requisition of a Director, convene a Board meeting.

## **23. Notice of Board meetings**

---

- 23.1 Subject to this Constitution, notice of a Board meeting must be given to each person who is at the time of giving the notice:

- (a) a Director, other than a Director on leave of absence approved by the Directors; or
- (b) an Alternate Director appointed under clause 29 by a Director on leave of absence approved by the Directors.

23.2 A notice of a Board meeting:

- (a) must specify the time and place of, or form of technology for, the meeting;
- (b) must state the nature of the business to be transacted at the meeting;
- (c) may be given in person, by post or, subject to the Corporations Act, by a form of technology;
- (d) must be provided with sufficient time for the Directors to properly consider the subject matter contained within the notice and any accompanying materials;
- (e) will be taken to have been given to an Alternate Director if it is given to the Director who appointed that Alternate Director.

23.3 A Director or Alternate Director may waive notice of a Board meeting by notifying the Company to that effect in person, by post or by a form of technology.

23.4 The non-receipt of notice of a Board meeting by, or a failure to give notice of a Board meeting to, a Director does not invalidate any act, matter or thing done or resolution passed at the meeting if:

- (a) the non-receipt or failure occurred by accident or error;
- (b) before or after the meeting, the Director or Alternate Director appointed by the Director;
- (c) has waived or waives notice of that meeting under clause 23.3; or
- (d) has notified or notifies the Company of their agreement to that act, matter, thing or resolution personally, by post or by a form of technology.

23.5 Attendance by a person at a Board meeting waives any objection that person and:

- (a) if the person is a Director, any Alternate Director appointed by that person; or
- (b) if the person is an Alternate Director, the Director who appointed that person as Alternate Director,

may have to a failure to give notice of the meeting.

## 24. Quorum at Board meetings

---

24.1 No business may be transacted at a Board meeting unless there is a quorum of Directors at the time the business is dealt with.

- 24.2 A quorum consists of 5 Directors.
- 24.3 A Director is to be taken to be present at a Board meeting if the Director is present in person or using technology.
- 24.4 If, within 30 minutes after the time appointed for the meeting, a quorum is not present, then, without prejudice to the right of those present to discuss but not to vote on any matter, the meeting will be dissolved or stand adjourned to such time, date and place as those present at the meeting decide and as notified to all Directors in accordance with clause 23.1.
- 24.5 Notwithstanding the above, if there is a vacancy in the office of a Director, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a Board meeting, the remaining Directors may act only in an emergency or for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or of convening a general meeting of the Company.

## **25. Board Chair**

---

The President shall preside as Board Chair at every Board meeting, or if there is no President, the President is not present within 15 minutes after the time for holding the meeting (or part of the meeting) or the chairperson is present but is prevented from acting or not willing to act as chair of the meeting or of part of the meeting, the Vice-President shall act as Board Chair of the meeting (or part of the meeting); or if there is no Vice-President, the Vice-President is not present within 15 minutes after the time for holding the meeting (or part of the meeting), or the Vice-President is present but is prevented from acting or not willing to act as chair of the meeting or of part of the meeting, the Directors may choose one of their number to be the Board Chair of the meeting (or part of the meeting).

## **26. Decisions of Directors**

---

- 26.1 A Board meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Directors under the law and this Constitution.
- 26.2 Questions arising at a Board meeting and any other matter to be determined by the directors under this Constitution are (unless a higher number or threshold is required under the law or this Constitution) to be decided by a majority of votes cast by the Directors present and a decision of that kind is for all purposes a determination of the Directors.
- 26.3 In the case of an equality of votes upon any proposed resolution at a Board meeting, the Board Chair shall have a second or casting vote.

## **27. Written resolutions**

---

- 27.1 An act, matter or thing is taken to have been done or a resolution passed at a Board meeting, if a document containing a statement to that effect is assented to by all of the Directors other than:

- (a) a Director on leave of absence approved by the Directors;
  - (b) a Director who disqualifies himself or herself from considering the act, matter or thing in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest;
  - (c) a Director who the Directors reasonably believe is not entitled to do the act, matter or thing or to vote on the resolution in question; and
  - (d) and the Directors who assent to the document would have constituted a quorum at a meeting held to consider that act, matter, thing or resolution.
- 27.2 The act, matter or thing is taken to have been done or the resolution passed when the document is last assented to by a Director and communicated to the President.
- 27.3 Two or more separate documents in identical terms each of which is assented to by one or more Directors may be taken as constituting one document.
- 27.4 A Director may signify assent to a document by signing the document or by notifying the Company of the Director's assent in person or by post, electronic, telephone or other method of written, audio or audio visual communication.
- 27.5 Where a Director signifies assent to a document otherwise than by signing the document, the Director must by way of confirmation sign the document at the next Board meeting attended by that Director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- 27.6 Where a document is assented to in accordance with this clause 27, the document is to be taken as a minute of a Board meeting.

## **28. Board Committees**

---

- 28.1 The Directors may resolve to delegate any of their powers to a Board Committee or Committees consisting of such number of Directors as they think fit. The Directors may revoke or vary any power so delegated.
- 28.2 A Board Committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Directors.
- 28.3 The provisions of this Constitution applying to meetings and resolutions of Directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a Board Committee.
- 28.4 Membership of a Board Committee may be treated as an extra service or special exertion performed by the members of the Board Committee.
- 28.5 The Directors may continue to exercise all of their powers despite any delegation made under this clause 28.

## 29. Alternate Directors

---

- 29.1 With the prior approval of the Board, a Director may appoint a person that is a Member of the Company to be the Director's Alternate Director for such period as the Director thinks fit.
- 29.2 An Alternate Director may, but need not, be a Director of the Company however an Alternate Director must be a director of Alliance Francaise de Sydney.
- 29.3 One person may act as the Alternate Director to more than one Director.
- 29.4 An Alternate Director may resign as an Alternate Director prior to the end of any stated period of appointment by giving notice of resignation to the Director appointing him or her and by giving the Company a copy of such resignation.
- 29.5 An Alternate Director is entitled, if the appointer does not attend a Board meeting, to attend and vote in place of and on behalf of the appointer, provided that, if more than one Director appoints the same person as an Alternate Director, that Alternate Director will only be entitled to one vote in his or her capacity as an Alternate Director at any Board meeting.
- 29.6 An Alternate Director is entitled to a separate vote for each Director the Alternate Director represents in addition to any vote the Alternate Director may have as a Director in his or her own right.
- 29.7 In the absence of the appointer, an Alternate Director may exercise any powers that the appointer may exercise and the exercise of that power by the Alternate Director is to be taken to be the exercise of the power by the appointer.
- 29.8 The office of an Alternate Director is vacated if and when the appointer vacates office as a Director.
- 29.9 The appointment of an Alternate Director may be terminated at any time by the appointer even though the period of the appointment of the Alternate Director has not expired.
- 29.10 An appointment, or the termination of an appointment, of an Alternate Director must be in writing signed by the Director who makes or made the appointment and does not take effect unless and until the Company has received notice in writing of the appointment or termination.
- 29.11 An Alternate Director is not to be taken into account in determining the minimum or maximum number of Directors allowed under this Constitution.
- 29.12 In determining whether a quorum is present at a Board meeting:
- (a) where a Director has appointed an Alternate Director, that Alternate Director is counted if the appointing Director is not present;
  - (b) where a person is present as Director and an Alternate Director for another Director, that person is counted separately provided that there is at least one other Director or Alternate Director present; and
  - (c) where a person is present as an Alternate Director for more than one Director, that

person is counted separately for each appointment provided that there is at least one other Director or Alternate Director present.

- 29.13 An Alternate Director, while acting as a Director, is responsible to the Company for his or her own acts and defaults and is not to be taken to be the agent of the Director by whom he or she was appointed.
- 29.14 As a corollary to the above, any Director appointing any Alternate Director is not responsible for the acts and defaults of the Alternate Director.

## **30. Validity of acts**

---

All acts done by any meeting of the Board or a Board Committee or by any person acting as a Director or Committee member shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director or Committee member or that the Director or Committee member or any of them were disqualified, had vacated office, or was not entitled to vote, be as valid as if every such person had been duly appointed and was qualified to be a Director or Committee member.

## **31. Executive officers**

---

### **31.1 General Manager**

- (a) The Board may employ a General Manager who will manage the day-to-day business of the Company.
- (b) The General Manager will report to and be responsible to the Board for the Company's activities and operations.
- (c) The General Manager shall, if requested by the Board, attend Board meetings and Board Committee meetings, and discuss and provide information on matters relevant to the operations of the Company but will not have a vote unless the General Manager is also a member of the relevant Board or Board Committee.

### **31.2 Secretary**

- (a) The Board shall appoint a Secretary who may be, but does not need to be, a Director.
- (b) The Secretary shall attend Board meetings, discuss and provide information on matters relevant to the operations of the Company, record minutes and other records of proceedings and comply with the requirements of the Corporations Act and other relevant laws relating to the role of Secretary.
- (c) The Secretary shall in accordance with the Corporations Act be appointed by the Board for such term, at such remuneration and upon such conditions as it thinks fit, in accordance with this Constitution, and any Secretary so appointed may also be removed by it.
- (d) Subject to any contract between the Company and the relevant Secretary, the

Secretary of the Company may be removed or dismissed by the Directors at any time, with or without cause. If that person is a Director, such removal or dismissal does not remove that person from office as a Director.

- (e) The duties of the Secretary include:
  - (i) ensuring that the necessary registers required by the law are established and properly maintained;
  - (ii) ensuring that any required annual returns and annual reports are lodged with the appropriate regulator on time; and
  - (iii) ensuring the organisation of, and attendance at, meetings of the Members and the Directors, including the sending out of notices, the preparation of agenda and the compilation of minutes.
- (f) An act done by a person acting as a Secretary is not invalid just because:
  - (i) of a defect in the person's appointment as a Secretary; or
  - (ii) the person is disqualified from being a Secretary,
  - (iii) if that circumstance was not known by the person or the Directors when the act was done.

### **31.3 Provisions applicable to all other executive officers**

- (a) A reference in this clause 31.3 to an executive officer is a reference to executive officers other than the General Manager or the Secretary.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions the Board deems fit.
- (c) Subject to any contract between the Company and the relevant executive officer, an executive officer of the Company may be removed or dismissed by the Board at any time, with or without cause.
- (d) The Board may:
  - (i) confer on an executive officer the powers, discretions and duties as they think fit, and may resolve to delegate any powers, discretions and duties vested in or exercisable by the Directors;
  - (ii) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
  - (iii) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- (e) An executive officer is not required to be a Member to qualify for appointment.
- (f) An act done by a person acting as an executive officer is not invalidated by reason only of:

- (i) a defect in the person's appointment as an executive officer; or
  - (ii) the person being disqualified to be an executive officer,
- if that circumstance was not known by the person when the act was done.

## **32. Accounts; Inspection of accounts; Audit**

---

### **32.1 Accounts**

The Board shall cause proper accounting and other records to be kept and shall distribute copies of every income statement and statement of financial position (including every document required by law to be attached thereto) accompanied by a copy of the auditor's report thereon as required by the Corporations Act provided, however, that the Board shall cause to be made out and laid before each annual general meeting a statement of financial position and income statement made up to a date not more than six months before the date of the meeting.

### **32.2 Inspection of Accounts**

The annual audited financial reports shall be placed on the Company's website.

### **32.3 Audit**

- (a) A properly qualified auditor shall be appointed and their remuneration fixed and duties regulated in accordance with the Corporations Act.
- (b) At least once in every year the accounts of the Company shall be examined and the correctness of the balance sheet ascertained by a properly qualified auditor.

## **33. Seal**

---

### **33.1 Adoption of common seal**

- (a) The Board may determine that the Company have a common seal or for the Company to no longer have a common seal.
- (b) Clauses 33.2 and 33.3 only apply if the Company has a common seal.

### **33.2 Safe custody of Seal**

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

### **33.3 Use of Seal**

- (a) The Seal must be used only by the authority of the Board or a Board Committee authorised by the Board to authorise the use of the Seal.
- (b) The authority to use the Seal may be given before or after the Seal is used.
- (c) Until the Board determines otherwise, the fixing of the Seal to a document must be witnessed by either 2 Directors or a Director and the Secretary.



## 34. Winding up and revocation of DGR status

---

### 34.1 Winding up

Upon the winding up or dissolution of the Company, any assets remaining after satisfaction of all of the Company's debts and liabilities, will be paid or distributed:

- (a) to the Member, provided it meets the requirements in paragraphs (b)(i) to (iv) below; or
- (b) if the Member does not meet the requirements in paragraphs (b)(i) to (iv) below, to another organisation or organisations determined by the Board at or before the time of winding up or dissolution of the Company and, in default of any determination, by the Supreme Court of New South Wales, Australia:
  - (i) which has charitable objectives similar to or inclusive of the objectives of the Company;
  - (ii) whose constituent documents require its income and property to be applied in promoting its objectives;
  - (iii) whose constituent documents prohibit the distribution of its income and property among its Members to an extent at least as great as those set out in clause 7; and
  - (iv) which, if the Company has deductible gift recipient endorsement, is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth).

### 34.2 Revocation of DGR status

If upon the winding-up or dissolution of the public fund listed on the Register of Cultural Organisations, or its endorsement as a deductible gift recipient is revoked (whether or not the Company is to be wound up), any surplus gift funds must be transferred to one or more organisations determined by the Board:

- (a) which has objectives similar to or inclusive of the objectives of the Company;
- (b) whose constituent documents require its income and property to be applied in promoting its objectives and agrees to use any distribution provided to it by the Company to further such objects or purposes;
- (c) whose constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 7 (either while it is operating or upon winding up);
- (d) is registered as a charity with the Australian Charities and Not-for-profits Commission; and
- (e) which, if the Company has deductible gift recipient status, is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth).

## **35. Minutes and records**

---

### **35.1 Minutes**

The Board must cause minutes of:

- (a) all proceedings and resolutions of general meetings;
- (b) proceedings and resolutions of meetings of the Board and of Board Committees; and
- (c) resolutions passed by the Board without a meeting, to be recorded and entered in books kept for that purpose, within one month after the meeting is held or the resolution is passed.

### **35.2 Signing of minutes**

- (a) Minutes of a meeting must be signed by the Chair of the meeting or the Chair of the next meeting within a reasonable time after the meeting.
- (b) Minutes of the passing of a resolution without a meeting must be signed by the Directors within a reasonable time after the resolution is passed.

### **35.3 Minutes as evidence**

A minute that is recorded and signed in accordance with clauses 35.1 and 35.2 is evidence of the proceeding, a resolution to which it relates, unless the contrary is proved.

### **35.4 Inspection of records**

- (a) Subject to the Corporations Act, the Board may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the Company or any of them will be open to the inspection of the Member other than Directors.
- (b) The Member does not have the right to inspect any books, records or documents of the Company except as provided by law or authorised by the Board.
- (c) The Company must establish and administer all registers required to be kept by the Company in accordance with the Corporations Act and the Member must provide the Company with such information as is required for the Company to comply with this clause 35.4. If events occur which would cause the information contained a register maintained by the Company to be inaccurate the Member must notify the Company in writing of the change within 21 days of the date of such change occurring.
- (d) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
- (e) The Company must keep the financial records required by the Corporations Act.

### **35.5 Directors' access to documents**

A Director has a right of access to the financial records of the Company at all reasonable times.

## **36. Indemnity and insurance**

---

### **36.1 Indemnified Persons**

In this clause 36, Indemnified Person means:

- (a) each person who is or has been a Director or executive officer (within the meaning of clause 31) of the Company;
- (b) such other officers or former officers of the Company or of its related bodies corporate as the Board in each case determines; and
- (c) if the Board so determines, any auditor or former auditor of the Company or of its related bodies corporate.

### **36.2 Indemnity**

The Company indemnifies, to the extent permitted by law, each Indemnified Person for all losses or liabilities incurred by the person as an officer of the Company and, if the Directors so determine, an auditor of the Company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.

### **36.3 Extent of Indemnity**

The indemnity in clause 36.2:

- (a) is a continuing obligation and is enforceable by an Indemnified Person even though that person may have ceased to be an officer or auditor of the Company or of a related body corporate;
- (b) applies to losses and liabilities incurred both before and after the date of adoption of that clause;
- (c) does not cover any loss or liability of an officer seeking to be indemnified under that clause if that loss or liability arises from that person's wilful misconduct or fraud; and
- (d) operates only to the extent that the loss or liability is not paid by insurance.

### **36.4 Insurance**

The Company must, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any Indemnified Person against any liability incurred by the person as an officer or auditor of the Company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs.

### **36.5 Savings**

Nothing in clauses 36.2 to 36.4 (inclusive):

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
- (b) limits the capacity of the Company to indemnify or provide insurance for any person to whom those clauses do not apply.

## **37. Notices**

---

### **37.1 Notices by the Company to the Member**

- (a) A notice may be given by the Company to the Member:
  - (i) by serving it personally at, or by sending it by post in a prepaid envelope to, the Member's address, or by and electronic transmission (including email) to any electronic address, as the Member has supplied to the Company for the giving of notices; or
  - (ii) if the Member does not have a registered address and has not supplied another address to the Company for the giving of notices, by exhibiting it at the registered office of the Company.
- (b) A signature to any notice given by the Company to the Member under this clause 37 may be in writing or by some other means (including electronically).
- (c) A certificate signed by a Director or Secretary of the Company to the effect that a notice has been given in accordance with this Constitution is conclusive evidence of that fact.

### **37.2 Notices by the Company to Directors**

Subject to this Constitution, a notice may be given by the Company to any auditor or Director either by serving it personally at, or by sending it by post in a prepaid envelope to, the auditor's, or Director's usual residential or business address, or such other address, or by electronic transmission (including email) to such electronic address, as the auditor or Director has supplied to the Company for the giving of notices.

### **37.3 Notices by Member or Directors to the Company**

- (a) Subject to this Constitution, a notice may be given by the Member, a Director or Director to the Company by serving it on the Company at, or by sending it by post in a prepaid envelope to, the registered office of the Company or by electronic transmission (including email) to the principal electronic address at the registered office of the Company.

- (b) The Directors may resolve generally, or on a case by case basis, that a notice that is to be received by the Company is not to be accepted if given by electronic means.
- (c) If a resolution of Directors is passed under clause 37.3(b), the Company must give sufficient notice of the resolution to those required to give the particular notice to allow for the giving of notice by other means.

#### **37.4 Time of service**

- (a) Where a notice is served personally, service of the notice is taken to be effected when delivered.
- (b) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
  - (i) in the case of a notice of a general meeting, on the day after the date of its posting; or
  - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
  - (iii) Where a notice is sent by electronic mail or other electronic means, service of the notice is taken to be effected:
    - (iv) when the sender receives a confirmation of delivery; or
    - (v) 30 minutes after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the notice has not been delivered,

whichever happens first.
- (c) Where the Company gives a notice under clause 37.4(b)(i) by exhibiting it at the registered office of the Company, service of the notice is to be taken to be effected when the notice was first so exhibited.
- (d) If the delivery or receipt of a notice is on a day which is not a Business Day or is after 5.00pm on a Business Day, it is deemed to be received at 9.00am on the following Business Day.

#### **37.5 Other communications and documents**

Clauses 37.1 to 37.4 (inclusive) apply, so far as they can and with necessary changes, to the service of any communication or document.

#### **37.6 Notices in writing**

Any notice, statement or other communication under this Constitution must be in writing, except that any notice convening a Board meeting does not need to be in writing.

## **38. By-laws**

---

### **38.1 Power to formulate by-laws of the Company**

Without limiting the Board's powers under this Constitution, the Board may from time to time pass resolutions to make or amend by-laws relating to:

- (a) procedure for nomination of Directors;
- (b) the delegation by the Board of its powers to the Board Committees;
- (c) the powers, role and function of any committee members, executive officers or Directors (including the terms of appointment of any executive director); and
- (d) any other matter not being inconsistent with this Constitution which relates to the operations or conduct of the Company.

### **38.2 Inconsistency**

In the event of any inconsistency between by-laws formulated pursuant to clause 38.1 and the provisions of this Constitution or the law, the provisions of this Constitution and the law shall prevail.

### **38.3 Effects of the by-laws**

The Member and Directors must comply with by-laws as if they were part of this Constitution.

## **39. General**

---

### **39.1 Submission to jurisdiction**

The Member, the Directors and the Company submit to the non-exclusive jurisdiction of the Supreme Court of New South Wales, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

### **39.2 Prohibition and enforceability**

Any provision of, or the application of any provision of, this Constitution which is void, illegal, prohibited or unenforceable in any place:

- (a) is, in that place, ineffective only to the extent to which it is void, illegal, prohibited or unenforceable; and
- (b) does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

### **39.3 Amending the Constitution**

- (a) Subject to clause 39.3(b) below, the Member may amend this Constitution by passing a Special Resolution.

- (b) The Member must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

**39.4 Dispute Resolution**

Any disputes (disagreements) under this Constitution between the Member or a Director and:

- (a) one or more Directors; or
- (b) the Company,

must be resolved in accordance with the dispute resolution procedures as set out in the relevant by-law passed by the Board from time to time.

Lyn Tuit



François Romanet

