

Constitution

Contemporary SA Incorporated

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Constitution

1. Definitions and interpretation

1.1 Definitions

The following definitions apply in this constitution, unless the context requires otherwise.

Act means the Associations Incorporation Act 1985 South Australia (as amended or substituted from time to time) and the Regulations made under it.

AEAF means Australian Experimental Art Foundation Incorporated.

Annual General Meeting means an annual general meeting of the Association, attended by the Board.

Association means Contemporary SA Incorporated.

ATO means the Australian Taxation Office.

Board means the board of management of the Association.

Board Member means a member of the Board.

CACSA means Contemporary Art Centre of South Australia Incorporated.

CEO means the chief executive officer of the Association.

Chairman means the chairman of the Board.

Financial Year means a calendar year.

Income Tax Act means the Income Tax Assessment Act 1997 (Cth).

Objects means the objects of the Association, as set out in clause 3.

Porter Street Property means the premises located at 14 Porter Street, Parkside South Australia comprising of the whole of the land in Certificate of Title [Volume 5831 Folio 264].

Powers means the powers of the Association, as set out in clause 4.

Public Fund means the public fund held by the Association listed on the Register of Cultural Organisations as required by subsection 30-300(3) of the Income Tax Act.

Special Resolution means a resolution passed at a duly convened meeting of the Board in accordance with paragraph (b) of the definition of 'special resolution' in subsection 3(1) of the Act.

1.2 Interpretation

In this constitution, unless the context requires otherwise:

- (a) the singular includes its plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) headings are for convenience only and do not affect interpretation;
- (d) words such as including or for example do not limit the meaning of the words preceding them;
- (e) a reference to:
 - (i) a clause, paragraph, schedule or annexure is to a clause, paragraph, schedule or annexure in or to this constitution;
 - (ii) writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible or tangible form;
 - (iii) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it; and
 - (iv) a provision within legislation (or subordinate legislation) is to that provision as amended or replaced.

2. The Association

- (a) The Association has been formed by the amalgamation of AEF and CACSA under section 22 of the Act.
- (b) The name of the Association is Contemporary SA Incorporated.
- (c) The name of the Association may be changed by Special Resolution.

3. Objects

The Objects of the Association are to:

- (a) encourage the development and presentation of the contemporary and experimental visual arts in South Australia, nationally and internationally;

- (b) promote, foster, develop and assist contemporary and experimental visual art and artists;
- (c) present exhibitions of emerging, mid-career and established contemporary and experimental visual artists working locally, nationally and internationally;
- (d) provide a supportive and critical space in which visual artists and curators are able to take risks;
- (e) develop audiences and enhance their access to and understanding of contemporary and experimental visual art;
- (f) to provide a venue where activities may take place in pursuance of the above clauses;
- (g) conduct business with integrity, respect, honesty and transparency; and
- (h) such other objects whether in addition to or in substitution for the above objects as the Board may decide by Special Resolution.

4. Powers

- (a) In addition to the powers set out in section 25 of the Act, the Association may:
 - (i) raise funds by whatever means it thinks fit;
 - (ii) write, publish and distribute pamphlets, periodicals, leaflets, advertisements, newspapers, books and other written material in physical or electronic form;
 - (iii) participate in the establishment or support of any charitable or educational organisation or body;
 - (iv) accept grants, subsidies, gifts of real or personal property, whether subject to any trust or not;
 - (v) acquire, hold, deal with, and dispose of, any real or personal property;
 - (vi) undertake, administer and execute any trusts, the undertaking of which may be incidental to the attainment of the Objects; and
 - (vii) open and operate bank accounts;
 - (viii) invest its moneys in any security or investments as the Board may determine from time to time;

- (ix) borrow money upon such terms and conditions as the Board thinks fit;
 - (x) give such security for the discharge of liabilities incurred by the Association as the Board thinks fit;
 - (xi) appoint agents to transact any business of the Association on its behalf;
 - (xii) enter into any other contract it considers necessary or desirable; and
 - (xiii) do all such other acts and things as are or may be incidental or conducive to the attainment of the Objects and exercise of the Powers or any of them.
- (b) The Board may delegate its Powers to any officer or employee of the Association as it sees fit.

5. Porter Street Fund

- (a) The Association owns the Porter Street Property.
- (b) The Association must not sell, or enter into an agreement to sell, the Porter Street Property for a period of 6 months following incorporation of the Association.
- (c) The Association must ensure the Porter Street Property is properly maintained.
- (d) Upon the sale of the Porter Street Property, the Association must transfer the proceeds of the sale of the Porter Street Property (once any debts and liabilities in relation to the Porter Street Property have been repaid) into a separate bank account to the ordinary operating account of the Association or any Public Fund held by the Association. This account will be known as the 'Porter Street Fund'.
- (e) The Association may invest the Porter Street Fund for the purpose of increasing the capital comprising the fund.
- (f) Subject to clause 5(g), the Association must only use the monies comprising the Porter Street Fund for the following purposes:
 - (i) the purchase of real property by the Association; and
 - (ii) the refurbishment and/or fit-out of a premises purchased by the Association.

- (g) The revenue earned on the Porter Street Fund must be used for the following purposes in the following proportions:
 - (i) a minimum of 50% of any revenue earned on the Porter Street Fund must be reinvested into the fund; and
 - (ii) the balance of any revenue earned on the Porter Street Fund and not reinvested (if any) may be used only for the purpose of provision of fellowships, professional development and/or prizes for South Australian artists or such other projects undertaken by South Australian artists as decided by the Board in its discretion.
- (h) Upon the winding up of the Association, the Porter Street Fund will be treated in the same manner that the cash of the Association is treated under clause 18.2.
- (i) This clause 5 can only be amended by unanimous resolution of the Board.

6. Management of the Association's affairs

The affairs of the Association are to be managed and controlled exclusively by the Board except where this constitution or the Act requires them to be done by the Association in general meeting.

7. Board of Management

7.1 Composition of the Board

- (a) The number of Board Members will be:
 - (i) from the date of incorporation of the Association until the first Annual General Meeting a maximum of 10 natural persons;
 - (ii) from the first Annual General Meeting a maximum of 9 natural persons; and
 - (iii) a minimum of 5 natural persons,subject to amendment by Special Resolution.
- (b) A majority of Board Members must reside in South Australia; and Board Members must not be employees of the Association.

7.2 Appointment and election of the Board

- (a) From the date of incorporation of the Association the Board:

- (i) will comprise 5 members of the board of management of AEF, including the Chair and 5 members of the committee of management of CACSA, including the Chair (Initial Board);
- (ii) subject to paragraphs 7.3(a)(iii) and (iv) below, the Initial Board will hold office as follows:
 - (A) 3 Board Members nominated by AEF and 3 Board Members nominated by CACSA for a term of 2 years and the remaining 4 Board Members from the Initial Board will step down and be replaced by 3 new Board Members (including a new Chairperson) to fill these vacancies at the first Annual General Meeting for a term of 3 years;
- (b) On and from the first Annual General Meeting Board Members will be elected by Special Resolution, provided that the candidate has been nominated by a Board Member and seconded by another Board Member.
- (c) The Board should seek the best possible candidates capable of sustaining the vigour of the Objects regardless of race, sex or category.
- (d) The Board may at any time appoint a natural person to fill a casual vacancy on the Board.
- (e) If at any time the number of Board Members drops below 5, the remaining Board Members may continue to function as the Board for 90 days.

7.3 Term of Office

- (a) The term of office of each Board Member begins on their appointment to the Board and ends on the earlier of:
 - (i) for the Initial Board as set out in clause 7.2(a) above;
 - (ii) for any subsequent Board Members, the 3rd Annual General Meeting occurring after their appointment;
 - (iii) for any appointment to fill a casual vacancy, the next Annual General Meeting;
 - (iv) their resignation in writing; or
 - (v) disqualification under clause 7.4.
- (b) A Board Member whose term of office has ended is eligible for nomination, election or co-option to the Board for a further term, if:
 - (i) the Board Member has served no more than 6 years; or

- (ii) the resolution to elect is passed unanimously and exceptional circumstances apply; or
- (iii) one year after the end of their term of office has expired.

7.4 Disqualification of Board Members

- (a) A Board Member ceases to hold office if:
 - (i) the Board Member is disqualified under section 30 of the Act;
 - (ii) the Board Member is expelled under paragraph (b);
 - (iii) the Board Member is permanently incapacitated by ill health; or
 - (iv) the Board Member is absent without apology for more than 3 consecutive Board meetings or for more than 3 Board meetings in a Financial Year.
- (b) A Board Member may be expelled from the Board by Special Resolution in the following ways:
 - (i) a Board Member has failed in the observance of this constitution, or of by-laws of the Association;
 - (ii) it would be detrimental to the interests of the Association for the person to remain as a Board Member;
 - (iii) a Board Member has received 21 clear days' notice of the meeting at which the expulsion is proposed and of the intended resolution of the Board Member's expulsion;
 - (iv) a Board Member is given the opportunity to attend and address the meeting at which the expulsion is proposed.

8. Office Bearers

8.1 The Office

- (a) The Office Bearers of the Association are the Chair, Vice Chair, Treasurer and Public Officer.
- (b) Subject to paragraph (c) Office Bearers are appointed and may be removed by the Board.
- (c) From the date of incorporation of the Association until the first Annual General Meeting there will be 2 co-Chairs, who will share the functions of the Chair and will consist of the chair of each of CACSA and AEF. On

the first Annual General Meeting the co-Chairs will cease office and one new Chair will be appointed.

- (d) A Board Member may resign from an Office Bearer position at any time by giving written notice to the Board. The Board Member may retain their position on the Board subject to sub-clauses 7.3 and 7.4 above.

8.2 Chair

The functions of the Chair are:

- (a) to chair all general meetings and Board meetings;
- (b) to represent the Board publicly;
- (c) to ensure that agenda papers are prepared for Board meetings;
- (d) to ensure that proper records are kept of the affairs of the Association;
- (e) to ensure that proper notices are given of meetings in accordance with this constitution and the Act;
- (f) to determine matters of order at Board meetings and to ensure that those who are entitled to participate in meetings have a reasonable opportunity to do so, and
- (g) to ensure a positive and professional working relationship between the Board and the CEO.

8.3 Vice Chair

The function of the Vice Chair is to act for the Chair when the Chair is unavailable or unwilling to act.

8.4 Treasurer

The functions of the Treasurer are to ensure that:

- (a) all money due to the Association is collected and received and all payments authorised by the Association are made; and
- (b) correct books and accounts are kept showing the financial affairs of the Association including full details of all receipts and expenditure connected with the activities of the Association.

8.5 Public Officer

The functions of the Public Officer are those prescribed by the Act for the person appointed to that office under section 56 of the Act.

9. Board meetings

9.1 Frequency

The Board must meet as often as is necessary to conduct the business of the Association and, in any case, not less than 4 times each Financial Year.

9.2 Quorum

A quorum of meetings of the Board is not less than any 5 Board Members. If within 30 minutes from the time appointed for the meeting a quorum is not present, the meeting will be dissolved.

9.3 Calling Meetings

The Chair or any 3 other Board Members may convene a Board meeting.

9.4 Notice of Meetings

Notice of a Board meeting must be given:

- (a) at the previous Board meeting; or
- (b) in case of emergency by notice given to Board Members as soon as is practicable in the circumstances; or
- (c) in any other case, by 7 days' notice to Board Members.

9.5 Form of Meetings

Meetings may be conducted in person, by video or teleconference, online or by telephone.

9.6 Minutes

The Board must ensure that minutes are kept of all its meetings.

9.7 Voting and decisions

- (a) Questions arising at a Board meeting by the Board must be determined by a majority of the votes of Board Members.
- (b) Each Board Member present at a Board meeting is entitled to 1 vote however, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.

10. Sub-committees

The Board may appoint sub-committees and delegate any of its functions to them. There must be at least one Board Member on each sub-committee but otherwise its members need not be Board Members. Sub-committees are recommendatory only and not deliberative, and all resolutions with policy or financial impacts must be referred back to the Board for resolution.

11. Advisory committees and patrons

The Board may at any time and at its discretion, appoint suitably qualified persons as External Advisors to the Board or Patrons of the Association. External Advisors and Patrons are not entitled to voting rights on any questions or resolutions at Board meetings.

12. Disclosure of interest

- (a) A Board Member who has a direct or indirect pecuniary interest in a contract, or proposed contract, with the Association must disclose the nature and extent of the interest to the Board in accordance with the Act.
- (b) The Board must record the disclosure in the minutes of a Board meeting.
- (c) The Chair must ensure a Board Member who has a direct or indirect pecuniary interest in a contract, or proposed contract, complies with the Act.

13. Annual General Meeting

- (a) There must be one Annual General Meeting held in each year within 5 months after the end of the Financial Year.
- (b) Supporters and the community will be invited to attend the Annual General Meeting but will not have voting rights.
- (c) The Annual General Meeting must be held as a meeting of the Board in accordance with clause 9.
- (d) The business of the Annual General Meeting is to:
 - (i) confirm the minutes of the preceding Annual General Meeting;
 - (ii) receive the Chair's report for the previous Financial Year;

- (iii) receive the Treasurer's report and the audited financial statements for the previous Financial Year;
- (iv) receive the Annual Report for the previous Financial Year;
- (v) elect Board Members, and
- (vi) conduct any other business placed on the agenda before the meeting.

14. Finances

14.1 Funds Source

- (a) The funds of the Association will be derived from fees, grants, donations, sponsorship and revenue received from ordinary business activities and other sources as the Board determines.
- (b) Subject to the Act, the Association must not make a payment from its income or capital, or dispose of any of its assets in specie, to Board Members or any of them, or to associates of Board Members or any of them, except reasonable remuneration of a Board Member for work done by the Board Member for or on behalf of the Association or payments or dispositions that are incidental to activities carried on by the Association in accordance or consistent with the Objects.

14.2 Financial Year

The Association's Financial Year begins on 1 January in each year and ends on 31 December of the same year.

14.3 Records

The Association must:

- (a) keep all records necessary properly to account for the receipt and expenditure of the Association's funds and for the preparation of proper financial statements;
- (b) prepare and maintain all financial records and statements in accordance with the Act and at law; and
- (c) in any case, prepare proper annual accounts to be made available at the Annual General Meeting.

14.4 Audit

The Board must ensure that the Association conforms with the audit requirements of the Act and, appoint a registered auditor who is independent of the Board to audit and report on the financial statements presented to the Annual General Meeting.

15. By-laws

15.1 Board May Make By-Laws

The Board may make by-laws that are not inconsistent with this constitution or the Act for the conduct of the affairs of the Association. Subject to clause 15.2, the by-laws have effect as provisions of this constitution.

15.2 Revoking By-Laws

The Board may revoke a by-law. A resolution to revoke a by-law has effect on the day on which it is passed unless it is expressly stated to take effect from some later date, in which case it will take effect from that later date.

16. Public Fund

- (a) The Association will maintain a Public Fund located in Australia.
- (b) Donations will be deposited into the Public Fund listed on the Register of Cultural Organisations. These monies will be kept separate from other funds of the Association and will only be used to further the Objects. Investment and distribution of monies in this Public Fund will be made in accordance with guidelines for public funds as specified by the ATO.
- (c) The Public Fund will be administered by a sub-committee of the Board, the majority of who, 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 Objects.
- (d) No monies or assets in this Public Fund will be distributed to Board Members, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.
- (e) The relevant 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 Australian Business Number of the Association;
 - (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 Act.
- (g) The Association must comply with any rules that the Treasurer or the Minister for the Arts make to ensure that gifts made to the Public Fund will only be used for the Objects.
- (h) The Association must provide to the relevant Department statistical information on the gifts made to the Public Fund every 6 months.

17. Amending the Constitution

This constitution can be amended by Special Resolution.

18. Winding up

18.1 Winding up of Public Fund

- (a) The Public Fund may be wound up by Special Resolution.
- (b) If upon the winding up or dissolution of the Public Fund, there remains after satisfaction of all its debts and liabilities, any property or funds, the property or funds shall not be paid to or distributed among its Board Members, but shall be given or transferred to some other fund, authority or institution:
 - (i) with objects similar to the Objects; and
 - (ii) with rules prohibiting the distribution of its or their income among its or their members; and
 - (iii) eligible for tax deductibility of donations under Subdivision 30-B, section 30-100, of the Income Tax Act; and
 - (iv) listed on the Register of Cultural Organisations maintained under the Income Tax Act.

18.2 Winding up of Association

- (a) The Association may be wound up:
 - (i) in accordance with section 41 of the Act; or
 - (ii) by Special Resolution.
- (b) A Board Member is not liable to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of a winding up of the Association.
- (c) Subject to the Act, and any court order, any surplus assets (including gift funds and public funds) that remain after the Association is wound up must be distributed to one or more charities:
 - (i) in the circumstances where the Association has endorsement from the ATO as a deductible gift recipient:
 - (A) with charitable purpose(s) similar to, or inclusive of, the Objects;
 - (B) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Association;
 - (C) that is or are deductible gift recipients within the meaning of subdivision 30-B, section 30-100 of Income Tax Act; and
 - (D) that is listed on the Register of Cultural Organisations.
 - (ii) in the circumstances where the Association does not have endorsement from the ATO as a deductible gift recipient:
 - (A) with charitable purpose(s) similar to, or inclusive of, the Objects; and
 - (B) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Association.
- (d) The decision as to the charity or charities to be given the surplus assets must be made by a Special Resolution at or before the time of winding up. If the Board does not make this decision, the Association may apply to the Supreme Court to make this decision.
- (e) If the Association's deductible gift recipient endorsement is revoked (whether or not the Association is to be wound up), any surplus public

funds must be transferred to one or more charities that meet the requirements of 18.1(b) as decided by the Board.

- (f) For the purpose of this clause:
 - (i) gift funds means:
 - (A) gifts of money or property for the Objects of the Association;
 - (B) contributions made in relation to a fund-raising event held for the Objects of the Association; and
 - (C) money received by the Association because of such gifts and contributions.
 - (ii) contributions and fund-raising event have the same meaning as in Division 30 of the Income Tax Assessment Act 1997 (Cth).

19. Notice

The Association may give notice to a Board Member or may publish information required to be given to a Board Member in any one or more of the following ways:

- (a) by notice posted to the Board Member's last known street address;
- (b) by email to the Board Member's last known email address; or
- (c) by publishing the notice on the Association's website.

20. Common seal

- (a) The common seal of the Association will be kept in the custody of the Public Officer.
- (b) The common seal will not be affixed to any instrument except by the authority of the Board and the affixing of the common seal must be attested by the signatures of 2 Board Members.