

## Definitions and Interpretation

### (i) Definitions

In this Constitution unless the contrary intention appears:

**Alternate Director** means a person appointed as an alternate director under Rule 9.6.

**BBSW** means the Australian Financial Markets Association's Bank Bill Swap Reference Rate (being the average mid rate published on the relevant day).

**Board** means all or some of the Board acting as a board of directors.

**Chairman** means the person who is chairman of the Board under Rule 9.16.

**Museum** means Sydney Maritime Museum Ltd.

**Constitution** means this constitution as amended from time to time, and a reference to a Rule is a reference to a Rule of this Constitution.

**Corporations Act** means the Corporations Act 2001 (Cwlth).

**Director** means a person holding office as a director of the Museum, and where appropriate includes an Alternate Director.

**Member** means a person entered in the Register as a member of the Museum.

**Part** means a Part of this Constitution.

**Register** means the register of Members of the Museum under the Corporations Act and if appropriate includes a branch register.

**Registered Office** means the registered office of the Museum.

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Museum in accordance with the Corporations Act.

**Secretary** means a person appointed under Rule 10.1 as a secretary of the Museum and where appropriate includes an acting secretary and a person appointed by the Board to perform all or any of the duties of a secretary of the Museum.

**State** means the State or Territory in which the Museum is for the time being registered.

### (ii) Interpretation

In this Constitution unless the contrary intention appears:

- (a) **(gender)** words importing any gender include all other genders;
- (b) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(regulations)** a reference to a law includes regulations and instruments made under the law;

- (e) **(amendments to statutes)** a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (f) **(from time to time)** a power, an authority or a discretion reposed in a Director, the Board, the Museum in general meeting or a Member may be exercised at any time and from time to time;
- (g) **(amount paid)** a reference to an amount paid on a share includes an amount credited as paid on that share.
- (h) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Board; and
- (i) **(writing)** “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

**(iii) Corporations Act**

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and
- (b) “Section” means a section of the Corporations Act.

**(iv) Headings and Parts**

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

This Constitution is divided into Parts.

**(v) Replaceable rules not to apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Museum unless stated in this Constitution.

**(vi) Limited liability**

The liability of the members is limited.

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## **1 Object**

The objects of the Museum are:-

- (a) To contribute to the preservation of the Maritime Heritage of the Commonwealth of Australia, including ships of all kinds, boats, vessels of maritime significance of all kinds, whether intended for economic advantage, recreation or otherwise and all objects and or collections of technical, historical, literary and or artistic interest associated therewith;
- (b) To restore, maintain, exhibit, display and operate for the benefit of the public vessels and artefacts held by the Museum or as are made available to the Museum for that purpose;
- (c) To restore, maintain, exhibit, display and operate for the benefit of the public such vessels and artefacts as are the property of the Museum;
- (d) To foster an interest in maritime objects of all kinds and of all historical periods.
- (e) To establish or facilitate the establishment of trusts to hold restore maintain and operate vessels and artefacts for the benefit of the people of Australia;
- (f) Without limiting the generality of this object the Museum shall at all times endeavour to foster and encourage a knowledge and understanding of steam as a means of propulsion, particularly in relation to the development of the Colony of New South Wales as subsequently included in the Commonwealth of Australia;
- (g) To co-operate with the Australian National Maritime Museum (ANMM) so as to assist both Museums to achieve their respective goals and to join in the display and provision of a maritime heritage experience based on the ANMM's site at Darling Harbour;
- (h) To maintain and operate a restoration and maintenance facility or facilities for the purpose of restoring and maintaining the vessels and artefacts which are the responsibility of the Museum and to promote the preservation and teaching of traditional maritime trades, skills and crafts and to display these to the public.
- (i) To carry out the objects of the Museum hereinbefore set out, either directly or in association with others including governments and corporations or other entities having like or similar objectives.

And it is hereby expressly agreed that in the construction of these presents, each of the above objects shall be construed as being a main object of the Museum and no one object or group of objects shall be deemed to be of greater importance than the other.

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## **2 Income**

### **2.1 Application of income**

The profits (if any) or other income and the property of the Museum, however derived, must be applied solely towards the promotion of the objects of the Museum as set out in this Constitution.

### **2.2 No dividends, bonus or profit to be paid to members**

No part of the profits or other income or the property of the Museum may be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise, to the Members.

### **2.3 Payments in good faith**

Nothing in this Constitution prevents the payment in good faith to an officer or Member, or to a firm of which an officer or Member is a partner:

- (a) for remuneration for services rendered to the Museum; or
- (b) for goods supplied in the ordinary course of business; or
- (c) of interest on money borrowed from an officer or Member at a rate not exceeding the rate fixed for the purposes of this Rule by the Museum in general meeting (or, if no rate is fixed, at a rate not exceeding BBSW plus 2% per annum); or
- (d) of reasonable rent for premises leased to the Museum by an officer or Member.

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## **3 Membership**

### **3.1 Categories of Membership**

The members of the Museum are divided into the following categories:

- (a) General members of the Museum are:
  - (i) Individual members
  - (ii) Life members
  - (iii) Foundation Life members
  - (iv) Corporate members
- (b) Governors
- (c) Honorary Life members
- (d) Honorary members
- (e) Such other class or classes of members as the Board shall from time to time determine.

### **3.2 Rights of various categories of Membership**

Except as provided for in this Constitution all General members of the Museum shall have the right to:

- (a) Attend meetings
- (b) Vote at meetings
- (c) Stand for election to the Board, and
- (d) Propose or second the nomination of a member standing for election as a Director of the Museum.

### **3.3 Individual Members**

The Board may from time to time as it shall think fit provide for different categories of Individual members including but not limited to “Volunteer” or “Family” or “Senior” and different levels of membership fees may be set from time to time for each category of Individual Member. Individual members may include bona fide family members, as determined by the Board from time to time of a nominated Individual member, and each member of the family of a nominated Individual member shall be entitled to the rights and privileges of membership but the nominated Individual member shall be entitled to cast only one vote at any meeting of the Museum and in the event of the winding up of the Museum shall be required to pay only one member guarantee contribution.

### **3.4 Life Members**

Any person who has paid the fee prescribed by the Board from time to time for life membership shall be entitled to be elected as a Life Member of the Museum and thereafter (subject to this Constitution) shall not be required to pay any further membership fee during the remainder of his life. Each Life Member shall be entitled to one vote at any meeting of the Museum.

### **3.5 Foundation Life Members**

Those members who within six months of the date of incorporation of the Museum paid the sum of eighty dollars (\$80.00) as a Life Membership fee are Foundation Life Members.

### **3.6 Corporate Members**

Any body corporate wheresoever and howsoever incorporated which has paid the fee prescribed by the Board from time to time for Corporate Members shall be entitled to be elected as a member of the Museum. Any Corporate Member may nominate a natural person to represent it at meetings of the Museum. Such nomination shall be in writing under the hand of the Secretary or other appropriate officer of the Corporation. Each Corporate Member shall only be required to pay one guarantee contribution in any winding up of the Museum.

### **3.7 Governors**

- (a) The Board may appoint as a Governor of the Museum any person who has been outstandingly magnanimous in donating money property or personal services to the Museum or to a Fund established or promoted by the Museum for the benefit of the Museum.
- (b) Any person so appointed shall be an Honorary Member and if his Honorary Membership is terminated pursuant to Rule 3.10 he shall ipso facto cease to be a Governor.

### **3.8 Board of Governors**

- (a) The Governors shall elect a Chairman of their meetings from among their number
- (b) The Governors may hold meetings among themselves at any time they so desire. Such meetings shall be convened by their duly elected Chairman or by the Secretary.
- (c) The Governors shall keep minutes of proceedings at their meetings and a copy thereof shall be provided to the Board.

- (d) The Governors shall meet with the Board at least twice each year under the chairmanship of the President of the Museum or his deputy for the purpose of reviewing and discussing the affairs of the Museum and advising the Board as to the manner in which they think the future activities of the Museum should be oriented. The Board shall not be obliged to act upon such advice but it will be expected to give it due consideration, together with relevant factors, when performing its decision making function as the board of directors.
- (e) Each year prior to the Annual General Meeting of the Museum the Governors shall by secret ballot elect up to two (2) of their number to be Directors of the Museum. Subject to the provisions of this Constitution any person so elected shall hold office as a Director from the conclusion of the forthcoming Annual General Meeting until the conclusion of the Annual General Meeting following it. Prior to the date of each Annual General Meeting the Governors shall notify the Secretary in writing of the names of the Governors who will represent the Governors as Directors of the Museum for the forthcoming year. If a Director elected by the Governors ceases to be a Director before the normal date for expiration of his period of office as a Director, the Governors may elect another Governor to be a Director of the Museum for the remainder of the period of office.

### **3.9 Honorary Life Members**

The Board may nominate any person who in its opinion has rendered outstanding services to the Museum to be appointed as an Honorary Life Member of the Museum. A person so nominated by the Board shall only be elected as an Honorary Life Member at an Annual General Meeting of the Museum by the majority vote of those members present and voting and upon being elected shall be entitled to the same rights privileges and obligations as are conferred on Honorary Members pursuant to Rule 3.10 with the exception that subparagraphs (c), (d) and (e) shall not apply and an Honorary Life Member shall be entitled to one vote at any meeting of the Museum.

### **3.10 Honorary Members**

- (a) Honorary membership may be granted by the Board without the payment of any entrance or membership fees to any person or organization provided that in the opinion of the Board they have rendered outstanding services in furthering the objects of the Museum or objects of a similar nature.
- (b) Except as provided herein Honorary members shall be entitled to exercise all the privileges of membership of the Museum.
- (c) The Board shall have the power to cancel the Honorary membership of any person or organization at any time and without assigning any reason.
- (d) Honorary members who are not also Governors shall not be entitled to vote at any meeting of the Museum or be elected as officers of the Museum.
- (e) No person or organization shall be admitted as an Honorary member or be relieved of the payment of entrance and membership fees unless they possess such qualifications as are defined herein and they shall be subject to this Constitution and any By-Laws of the Museum.

### **3.11 Patron**

A patron may be appointed from time to time

### **3.12 Admission as a Member**

The Board may admit any person of or above the age of eighteen years as a Member in accordance with this Constitution.

### **3.13 Application requirements**

An application for membership must be:

- (a) in such form and supported by such documentation as the Board may from time to time prescribe;
- (b) made in writing;
- (c) signed by the applicant; and
- (d) lodged with the Secretary.

### **3.14 Consideration of application**

At the earliest practicable meeting of the Board after the receipt of any application for membership, the Board must consider the application and determine whether to accept or reject the application. Negative votes in the ratio of one in two shall exclude an applicant from election as a member. The Board is not required to give any reason for determining not to accept an application for membership.

### **3.15 Notification of Member**

When the Board has accepted or not accepted an application for membership under Rule 3.14, the Secretary must promptly send the applicant written notice of the decision.

- (a) Every person accepted for membership shall be deemed to agree to be bound by the Constitution and By-Laws of the Museum from time time in force and the payment of the Museum entrance fee and membership fee shall be conclusive evidence of such agreement.

### **3.16 Entrance Fee and Annual membership fee**

Each Member must pay an entrance fee on application to join the Museum and an annual membership fee, both fees of an amount and at a time determined by the Board from time to time.

- (a) Every person accepted for membership shall be required to pay within one month of the date of notice of acceptance the entrance fee and first annual membership fee in the account rendered to him with the notice of acceptance of membership failing which payment the membership may be declared null and void.
- (b) Annual membership fees are payable in advance and if any fee or call or charge shall become unpaid for a period of one month after it becomes due the member concerned shall be suspended from membership and shall be notified by the Secretary in writing of the default and if the sum remains unpaid for two months thereafter the member shall cease to be a member unless the Board considers that there is sufficient reason for non-payment.
- (c) No person shall be entitled to be present or vote at any meeting of the Museum or be elected to any office unless he shall have paid all instalments of any fees or moneys due to the Museum at the time of such meeting.

### **3.17 Ceasing to be a Member**

A Member ceases to be a Member on:

- (a) resignation; or
- (b) death; or
- (c) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally; or
- (d) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health; or
- (e) the termination of the person's membership by the Board in accordance with this Constitution; or
- (f) if a corporation, being dissolved or otherwise ceasing to exist, having a liquidator or provisional liquidator appointed to it, or being unable to pay its debts.

### **3.18 Resignation**

A Member may by written notice to the Museum resign his membership with immediate effect or with effect from a specified date occurring not more than three months after the service of the notice but shall continue liable for any entrance or membership fee and all arrears due and unpaid at the date of his resignation and for any sum not exceeding twenty dollars (\$20.00) representing the members guarantee contribution.

### **3.19 Termination**

- (a) If any member shall refuse to comply with the provisions of this Constitution, By-Laws, rules or regulations of the Museum or if any member shall in the opinion of the Board be guilty of any conduct deemed by the Board to be unbecoming of a member or prejudicial to the interests of the Museum such member may be expelled by a resolution of the Board and such resolution need not state the grounds, facts, or opinions upon which it is based PROVIDED:-
  - (i) That at least seven (7) days before the meeting at which such resolution is passed the member concerned shall have been notified in writing of the intended resolution and requested to be present at the meeting and that he shall at such meeting and before such resolution is passed have had the opportunity of giving orally or in writing any explanation or defence he may think fit.
  - (ii) That seven days written notice of the meeting to consider the case of a member under this Rule shall be given to the Directors and that the notice convening the meeting shall state that the case of the particular member or members and the question of his or their membership are to be considered.
- (b) Any resolution under this Rule shall require for its passing a simple majority of the votes of the Board.

- (c) Should a member incur any debt to the Museum or to the Museum's staff or servants or persons under contract to the Museum (which debt is not covered by the provisions of Rule 3.16(b)) and fail to discharge such a debt upon request in writing by the Secretary he may, by resolution of the Board, be suspended or expelled from membership provided that before so resolving the Board shall give the member concerned due notice of their intention to take such course of action (but the provisions of Rule 3.19(a) shall not apply).

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## **4 General meetings**

### **4.1 Convening general meeting**

- (a) The Board or a Director may convene and arrange to hold a general meeting of the Museum whenever they think fit and must do so if required to do so under the Corporations Act.
- (b) The Annual General Meeting of the Museum shall be held within four months after the end of the Museum's Financial Year at such time and place to be decided by the Museum provided that the place shall be within twenty kilometres radius of the GPO, Sydney.
- (c) The abovementioned annual general meeting shall be called the Annual General Meeting of the Museum. All other general meetings shall be called extraordinary general meetings.

### **4.2 Notice of general meeting**

Except where Section 249H(2) of the Corporations Act applies, at least 21 days notice must be given of a meeting of the Members, exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given.

Notice of a meeting of Members must be given in accordance with Section 249J of the Corporations Act, and the replaceable rule in Section 249J(4) applies.

### **4.3 Cancellation or postponement of a meeting**

Where a meeting of Members (including an annual general meeting) is convened by the Board it may, whenever it thinks fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by the Board. This Rule does not apply to a meeting convened in accordance with the Corporations Act by a single director, by Members or by the Board on the request of Members.

### **4.4 Notice of cancellation or postponement of a meeting**

Written notice of cancellation or postponement of a general meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a meeting of the Museum's Members under the Corporations Act.

### **4.5 Contents of notice of postponement of meeting**

A notice of postponement of a general meeting must specify:

- (a) the postponed date and time for the holding of the meeting;

- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

#### **4.6 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this Constitution or the Corporations Act.

#### **4.7 Business at postponed meeting**

The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the notice convening the meeting.

#### **4.8 Proxy, attorney or Representative at postponed meeting**

Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative, a proxy or an attorney or a Representative is authorised to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this Rule, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of representative unless the Member appointing the proxy, attorney or Representative gives to the Museum at its registered office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

#### **4.9 Non-receipt of notice**

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

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## **5 Proceedings at general meetings**

### **5.1 Representation of Member**

A Member may be present and vote in person or may be represented at any meeting of the Museum by:

- (a) a proxy;
- (b) attorney; or
- (c) in the case of a body corporate which is a Member, a Representative.

## **5.2 Reference to a Member**

Unless the contrary intention appears, a reference to a Member in this Part 5 means a person who is a Member, or is a proxy, attorney or Representative of that Member.

## **5.3 Number for a quorum**

Subject to Rule 5.6, twenty five (25) Members present in person or by proxy, attorney or Representative are a quorum at a general meeting, except that, where the Museum has less than twenty five Members in total, the quorum for a general meeting shall be those Members present in person or by proxy, attorney or Representative.

## **5.4 Requirement for a quorum**

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting, it is taken to be present throughout the meeting unless the chairman of the meeting (on the chairman's own motion or at the instance of a Member, proxy, attorney or Representative who is present) declares otherwise.

## **5.5 Quorum and time**

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened by a Director or by, or at the request of, Members, is dissolved;  
and
- (b) in any other case stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Board appoint by notice to the Members and others entitled to notice of the meeting.

## **5.6 Adjourned meeting**

Subject to Rule 5.3, at a meeting adjourned under Rule 5.5(b), twenty five (25) persons each being a Member, proxy, attorney or Representative present at the meeting are a quorum and, if a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the members present shall constitute a quorum.

## **5.7 Entitlement to preside at general meetings**

The President is entitled to preside as chairman at a general meeting.

## **5.8 Absence of chairman at general meeting**

If a general meeting is held and the Chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the following may preside as chairman of the meeting (in order of precedence):

- (a) The Vice President of the Museum
- (b) a Director chosen by a majority of the Board present

## **5.9 Conduct of general meetings**

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this Rule is final.

## **5.10 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

## **5.11 Equality of votes - casting vote for chairman**

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the meeting is entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy or attorney or Representative.

## **5.12 Declaration of results**

At any general meeting, a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn. A declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Museum, is conclusive evidence of the fact. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

## **5.13 Appointment of proxy**

- (a) A Member entitled to attend and vote at a meeting of Members may appoint:
  - (i) a person; or
  - (ii) if the Member is entitled to cast two or more votes at the meeting, two persons,

as the Member's proxy or proxies to attend and vote for the Member at the meeting. If the Member appoints two proxies and the instrument of the appointment does not specify the number or proportion of the Member's votes each proxy may exercise one-half of the Member's votes.

- (b) A proxy must be a Member of the Museum in good financial standing

- (c) .A proxy shall be appointed using the form of proxy approved by the Board from time to time and issued to Members by the Secretary with the notice calling a meeting of Members and in addition to the formal authorisation of the proxy by the Member to vote at the meeting the form of proxy shall have two parts:-
- (i) Part A to be used when there is an election of Directors at an Annual General Meeting and shall set out instructions on the number of candidates to be elected together with the name of each candidate and a box beside the name of each candidate and if the Member places a cross in any box in Part A that will be deemed to be a vote for that candidate
  - (ii) Part B to be used when a resolution is to be voted on at a meeting of Members as set out in the notice of meeting and shall state the wording of any resolution together with a box marked For and a box marked Against and if the Member places a cross in any box in Part B that will be deemed to be a vote for or against the resolution as the case may be
  - (iii) The wording of the form of proxy shall contain the provision that a Member may direct his proxy to complete Part A and Part B of the form of proxy as the case may be using his entire discretion
- (d) All proxy appointment forms must be returned to the Secretary no later than forty eight (48) hours before the time set for the meeting of Members at which the proxy is appointed to vote
- (i) If the appointment of a proxy is signed by the appointor's attorney the authority under which the appointment was signed or a certified copy of the authority must accompany the appointment of the proxy
  - (ii) A proxy appointment form will be deemed to have been received by the Secretary if it is received at the Museum's registered office or a fax number at the Museum's registered office or is received at a place fax number or electronic address specified for the purpose in the notice of meeting.

#### **5.14 Director entitled to attend meeting**

A Director is entitled to receive notice of and to attend all general meetings of the Museum and is entitled to speak at those meetings.

#### **5.15 Proceedings at Annual General Meetings**

- (a) The business of the Annual General Meeting shall be as follows:
- (i) To confirm the Minutes of the previous Annual General Meeting
  - (ii) To receive, consider and adopt the following reports:
    - (A) Directors' Report
    - (B) Financial Report of the Museum
    - (C) Auditors' Report on the financial report
  - (iii) To elect the Directors

- (iv) To appoint an Auditor or Auditors in the event that there be a vacancy in the office of Auditor
- (v) To deal with any other business of which due notice has been given to the members
- (b) The chairman of the Annual General Meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the Museum
- (c) If the Museum's auditor or a representative of the Museum's auditor is at the meeting, the chairman of the Annual General Meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or the auditor's representative questions relevant to the conduct of the audit and the preparation and conduct of the auditor's report.

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## **6 The Board**

### **6.1 Number and composition of Board**

The business and affairs of the Museum shall be under the management of a Board of Directors.

- (a) The number of Directors shall not be less than seven (7) nor more than nine (9).
- (b) No person shall be qualified to be a Director who is not a member of the Museum in good financial standing excepting any Director appointed by the Governors.
- (c) At least one Director must ordinarily reside in Australia.
- (d) Each Director shall be elected for a period of two years.
- (e) The Board of Directors shall consist of a:
  - (i) President elected by the Members
  - (ii) Vice President elected by the Members
  - (iii) Honorary Treasurer elected by the Members
  - (iv) four (4) other Directors elected by the Members
  - (v) up to two (2) Directors who may be appointed by the Governors as hereinbefore provided.
- (f) If a Governor is elected by the Members to the Board of Directors that appointment shall be counted towards the entitlement of Governors to appoint Directors
- (g) The roles of the Vice President are to
  - (i) act as President in the absence of that person
  - (ii) represent the President if so required

- (iii) chair meetings of the Board or members in the absence of the President
- (iv) in the event that the President is no longer able to perform that office because of death, resignation or other reason, to automatically be appointed President until the next annual general meeting

## **6.2 Appointment by Museum**

The Members in general meeting may by resolution appoint any person, subject to Rule 6.1, to be a Director.

- (a) Nominations for election as a Director shall be made in writing to the Secretary at least thirty (30) days prior to the date of the Annual General Meeting and shall be signed by two members of the Museum and by the nominee.
  - (i) In the absence of sufficient nominations in writing, nominations may be made orally, with the consent of the nominee, at the Annual General Meeting.
- (b) At the Annual General Meeting, the President, Vice President and Honorary Treasurer shall be elected by the members in that order and the result of the elections announced before the election of the other four (or as the case may be) Directors is proceeded with. Any person who is nominated for any specific office shall, if not elected to that office, and who is nominated for any other lesser office, be eligible for election to that lesser office.
- (c) The election of all Directors shall be, where necessary, or on demand by any one member, by ballot.
- (d) At the Annual General Meeting the chairman shall announce to the meeting at the conclusion of the election of Directors the names of the Governors, appointed by the Governors, to serve as Directors for the forthcoming year.

## **6.3 Appointment by Board**

- (a) The Board may at any time appoint any person to be a Director to fill a casual vacancy.
- (b) If a person is appointed under this Rule as a Director, they shall continue in office until the Annual General Meeting at which the Director whom they replaced would have completed his term of office, provided that if the original term of office was due to extend beyond the next Annual General Meeting the Director filling the vacancy must be confirmed in office by the members at the next Annual General Meeting.
- (c) If a casual vacancy occurs because a Director appointed by the Governors ceases to be a Director, such vacancy may be filled by the Governors.
- (d) In the event that the office of President becomes vacant through a casual vacancy, it will automatically be filled by the Vice President.

## **6.4 Removal of Director by Museum in general meeting**

The Museum in general meeting may by resolution remove a Director from office as a director subject to the provisions of the Corporations Act.

## **6.5 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) 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;
- (b) resigns from the office by notice in writing to the Museum; or
- (c) is removed from the office under Rule 6.4; or
- (d) fails to attend three consecutive meetings of the Board without leave of absence.

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# **7 Remuneration and expenses**

## **7.1 Remuneration of Board**

A Director may not be paid any remuneration for services as a Director but may be reimbursed or paid remuneration for services rendered to the Museum in the following circumstances:

- (a) as an honorarium in respect of special honorary services rendered or the reimbursement of out-of-pocket expenses the Director may incur or interest on money lent on hire of goods or rent for premises demised to the Museum; or;
- (b) as remuneration for any services rendered to the Museum in a professional or technical capacity, other than in the capacity of Director, not more than an amount which commercially would be reasonable payment for the service.

## **7.2 Director's remuneration must be approved**

Any payment made to a Director must be approved by the Board.

## **7.3 Director's interests**

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in any other Museum, body corporate, trust or entity promoted by the Museum or in which it has an interest of any kind;
- (b) enter into any contract or arrangement with the Museum;
- (c) participate in any association, institution, fund, trust or scheme for past or present employees or Board of the Museum or persons dependent on or connected with them;
- (d) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Museum, except as auditor;
- (e) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Board and may be present at any meeting where any matter is being considered by the Board; and
- (f) sign or participate in the execution of a document by or on behalf of the Museum; and

- (g) do any of these things despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Museum for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.

A reference to the Museum in this Rule is also a reference to each related body corporate of the Museum.

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## **8 Powers and duties of Board**

### **8.1 Board to manage Museum**

The business of the Museum is to be managed by the Board, who may exercise all such powers of the Museum as are not, by the Corporations Act or by this Constitution, required to be exercised by the Museum in general meeting.

### **8.2 Specific powers of Board**

Without limiting the generality of Rule 8.1, the Board may exercise all the powers of the Museum to borrow or raise money, to charge any property or business of the Museum 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 Museum or of any other person.

### **8.3 Appointment of attorney**

The Board may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Museum for the purposes and with the powers, authorities and discretions vested in or exercisable by the Board for such period and subject to such conditions as they think fit.

### **8.4 Provisions in power of attorney**

A power of attorney granted under Rule 8.3 may contain such provisions for the protection and convenience of persons dealing with the attorney as the Board think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

### **8.5 Minutes**

The Board must cause minutes of meetings to be made and kept in accordance with the Corporations Act.

### **8.6 Signing of cheques**

The Board may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Museum, may be signed, drawn, accepted, endorsed or otherwise executed.

## **8.7 By-Laws**

Subject to the provisions of this Rule the Board may make such By-Laws rules or regulations not inconsistent with this Constitution as in the opinion of the Board are necessary or desirable for the proper control administration and management of the Museum's finances affairs interests effects and property and for the convenience comfort and well being of the members of the Museum and to amend or rescind from time to time any such By-Laws rules and regulations.

- (a) The Board may enforce the observance of all By-Laws rules or regulations by suspension from enjoyment of Museum privileges or any of them or otherwise as the Board shall think fit.
- (b) Any By-Law rule or regulation made under these Rules shall not come into force and be operative until seven (7) days after the posting on Museum noticeboards of notice thereof to all members.
- (c) The Museum in Annual General Meeting may revoke and disallow any such By-Law rule or regulation provided that the notice convening the meeting states that notice has been received as provided for in 8.7(d) and also specifies the By-Law rule or regulation objected to.
- (d) Any five members may at any time during the month of July in any year give to the Secretary notice in writing signed by them that they object to one or more specified By-Laws rules or regulations and the Secretary shall then include a statement to that effect on the notice convening the next Annual General Meeting.
- (e) Neither the revocation or disallowance by the Museum in Annual General Meeting of any By-Law rule or regulation nor the knowledge that it might take place nor its amendment or rescission by the Board shall invalidate any act by the Board or by an officer or servant of the Museum prior to such amendment or rescission.

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## **9 Proceedings of Board**

### **9.1 Board meetings**

The Board shall meet together at least once a month for the despatch of business and may adjourn and otherwise regulate their meetings as they think fit.

### **9.2 Director may convene a meeting**

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Board.

### **9.3 Questions decided by majority**

A question arising at a meeting of the Board is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Board.

### **9.4 Alternate Director or proxy and voting**

A person who is present at a meeting of the Board as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy and, if that person is also a Director, has one vote as a Director in that capacity.

#### **9.5 Chairman's casting vote**

In the event of an equality of votes the chairman of the meeting has a casting vote.

#### **9.6 Appointment of Alternate Director**

Subject to the Corporations Act, a Director may appoint a person approved by a majority of the Board, to be an Alternate Director in the Director's place during such period as the Director thinks fit.

#### **9.7 Alternate Director and meetings**

An Alternate Director is entitled to notice of all meetings of the Board and, if the appointor does not attend a meeting, is entitled to attend and vote in the appointor's place.

#### **9.8 Alternate Director's powers**

An Alternate Director may exercise all the powers that the appointor may exercise except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor insofar as the appointor has not exercised or performed them.

#### **9.9 Alternate Director responsible for own acts and defaults**

Whilst acting as a Director, an Alternate Director:

- (a) is an officer of the Museum and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

#### **9.10 Termination of appointment of Alternate Director**

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

#### **9.11 Appointment or termination in writing**

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Secretary.

#### **9.12 Alternate Director and number of Board**

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

#### **9.13 Director attending and voting by proxy**

A Director may attend and vote by proxy at a meeting of the Board if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as a proxy for another Director who would be entitled to vote if present at the meeting has one vote for that other Director and one vote as a Director in that capacity.

#### **9.14 Quorum for Board meeting**

- (a) At a meeting of Board, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is at least five Directors.
- (b) If a quorum not be present within fifteen (15) minutes of the time fixed for a meeting of the Board, the meeting shall stand adjourned to the same day in the next week at the same time and place and if at the adjourned meeting a quorum is not present within fifteen (15) minutes from the time appointed for the meeting, the members present shall be a quorum.

#### **9.15 Remaining Board may act**

The continuing Board may act despite a vacancy in their number.

#### **9.16 Chairman**

The President if present shall be entitled to preside at all meetings of Directors.

#### **9.17 Absence of chairman at Board meeting**

If a Board meeting is held and

- (a) The President is not present
- (b) the President is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act

the Vice President shall chair the meeting. In the absence of both President and Vice President the remaining Directors shall elect one of their number as chairman of the meeting.

#### **9.18 Board committees**

The Board may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a committee or committees consisting of at least one Director and such other persons as the Board thinks fit.

#### **9.19 Powers delegated to Board committees**

A committee to which any powers have been delegated under Rule 9.18 must exercise those powers in accordance with any directions of the Board. A power so exercised is taken to have been exercised by the Board.

#### **9.20 Chairman of Board committee**

The members of a committee may elect one of their number as chairman of their meeting. If a meeting of a committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

### **9.21 Board committee meetings**

The meetings and proceedings of a committee are governed by the provisions of this Constitution as to the meetings and proceedings of the Board so far as they are applicable.

### **9.22 Circulating resolutions**

The Board may pass a resolution without a Board meeting being held if a majority of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last director signs.

### **9.23 Meeting by use of technology**

A Board meeting may be called or held using any technology consented to by each Director. The consent may be a standing one. A Director may only withdraw consent at a reasonable time before the meeting.

### **9.24 Validity of acts of Board**

All acts done at a meeting of the Board or of a committee of the Board, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

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## **10 Secretary**

### **10.1 Appointment of Secretary**

There must be at least one Secretary of the Museum who is to be appointed by the Board.

- (a) Any person appointed to the position of Secretary must be a Member of the Museum in good financial standing.

### **10.2 Suspension and removal of Secretary**

The Board may suspend or remove a Secretary from that office.

### **10.3 Powers, duties and authorities of Secretary**

The Board may vest in a Secretary such powers, duties and authorities as they may from time to time determine and the Secretary must exercise all such powers and authorities subject at all times to the control of the Board.

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## **11 Seals**

### **11.1 Safe custody of common seals**

The Board must provide for the safe custody of any seal of the Museum.

### **11.2 Use of common seal**

If the Museum has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Board, or of a committee of the Board authorised by the Board to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

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## **12 Inspection of records**

### **12.1 Inspection by Members**

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 accounting records and other documents of the Museum or any of them will be open to the inspection of Members (other than Directors).

### **12.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Museum except as provided by law or authorised by the Board or by the Museum in general meeting.

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## **13 Service of documents**

### **13.1 Document includes notice**

In this Part 13, a reference to a document includes a notice.

### **13.2 Methods of service**

The Museum may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
- (c) by sending it to a fax number; or
- (d) by sending it to an electronic address nominated by the Member.

- (i) A Member may by giving notice in writing to the Secretary request to receive all documents from the Museum by electronic transmission except where the form of the document renders this impracticable in which case delivery will be made personally or by post. The Museum may make some documents available to Members via the Museum's web site and delivery of such documents will be deemed to have been made to a Member registered to receive documents by electronic transmission when an electronic transmission is sent to the Member advising him that a document is available for Members on the Museum's web site.

### **13.3 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the third day after the date of its posting.

### **13.4 Fax or electronic transmission**

If a document is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have been delivered on the day following its transmission.

### **13.5 Evidence of Service**

A certificate in writing signed by a Director or a Secretary stating that a document was sent by post or by fax or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

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## **14 Winding up**

### **14.1 Excess property on winding up**

If any property remains on the winding up or dissolution of the Museum and after satisfaction of all its debts and liabilities, that property may not be paid to or distributed among the Members but must be given or transferred to another institution or institutions:

- (a) having objects similar to the objects of the Museum; and
- (b) whose constitution prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Museum under this Constitution; and

The institution or institutions are to be determined by Members at or before the time of dissolution or, failing such a determination, any property remaining shall be given or transferred to the Australian National Maritime Museum.

## **14.2 Contribution of Member on Winding-Up**

Each Member undertakes to contribute to the Museum's property if the Museum is wound up while he is a Member or within one year after he ceases to be a Member, for payment of the Museum's debts and liabilities contracted before he ceases to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding twenty dollars (\$20.00).

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## **15 Indemnity and insurance**

### **15.1 Indemnity**

Every person who is or has been:

- (a) a director of the Museum; or
- (b) a secretary of the Museum;

is entitled to be indemnified out of the property of the Museum against:

- (c) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (d) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

unless:

- (e) the Museum is forbidden by statute to indemnify the person against the liability or legal costs; or
- (f) an indemnity by the Museum of the person against the liability or legal costs would, if given, be made void by statute.

### **15.2 Insurance**

The Museum may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a director or secretary of the Museum against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Museum is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Museum paid the premium, be made void by statute.

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## **16 Accounts**

- (a) The Board shall cause proper accounts and records to be kept with respect to the financial affairs of the Museum in accordance with the Corporations Act.

- (b) The books of account shall be kept at the Registered Office of the Museum or at such other place as the Board thinks fit. The Museum shall at all reasonable times make its accounting records available in writing for the inspection of members of the Board and any other persons authorised or permitted by or under the Corporations Act to inspect such records.
- (c) The Board shall, not less than twenty one (21) days before each Annual General Meeting and in any event within four (4) months of the end of the financial year of the Museum send to all members of the Museum entitled to attend the Annual General Meeting a copy of all reports which pursuant to Section 314 of the Corporations Act are to be laid before the Annual General Meeting in respect of the financial year ending on the thirtieth day of June immediately prior to the Annual General Meeting and without limitation these shall include:
  - (i) a copy of the Financial Report of the Museum;
  - (ii) a copy of the Directors' Report; and
  - (iii) a copy of the Auditors' Report on the financial report.

**16.2 Financial Year**

The financial year of the Museum shall commence on the first day of July in each year and end on the last day of June in the following year or such other period as having regard to the Corporations Act, the Board may determine.

**16.3 Auditors**

Auditors shall be appointed and their duties regulated in accordance with the Corporations Act and their remuneration shall be fixed by the Board,

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I confirm that this is the form of the Constitution presented for adoption to the Extraordinary General Meeting of Sydney Maritime Museum Ltd on Sunday, 5<sup>th</sup> December 2004:

Signed:.....*Christopher Stannard*..... Chairman