

CARCLEW INC.

CONSTITUTION AND RULES

(Updated December 2024)

CARCLEW INC.
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(As amended December 2024)

INCORPORATED UNDER THE PROVISIONS
OF THE
ASSOCIATIONS INCORPORATION ACT 1985

1. NAME:

The name of the Association shall be "CARCLEW INCORPORATED".

2. DEFINITIONS:

In these Constitution and Rules, the following definitions shall apply;

- 2.1 The "Association" shall mean Carclew Incorporated.
- 2.2 "Chairperson" means the chairperson of the Association appointed by the Minister under rule 6.2 from time to time or by the Members under rule 6.10.
- 2.3 "Deputy Chairperson" means the deputy chairperson of the Association appointed by the Board under rule 6.14 from time to time.
- 2.4 The "Minister" shall mean the Minister responsible for Carclew in the State of South Australia.
- 2.5 The "Board" shall mean the Carclew Board which is the Board of Management of the Association as appointed by the Minister.
- 2.6 "Member" shall mean any member of the Association and Board appointed by the Minister.
- 2.7 "The Act" shall mean the Associations Incorporation Act 1985 or any legislation replacing it.
- 2.8 "Financial Year" has the meaning given to that term in the Act.
- 2.9 "Prescribed Association" has the meaning given to that term in the Act.

3. OBJECTS:

The Minister whose portfolio includes Carclew (the Minister) is the registered proprietor of an estate in fee simple in the whole of the land on CT5500/480.

Carclew, the land on CT CT5500/480 and the house it contains, is a dedicated centre for arts for children and young people.

Carclew Incorporated is responsible for the day-to-day control and running of Carclew.

The Members of the Association, the Board of Carclew Incorporated, are appointed by the Minister.

The objects of Carclew Incorporated are to ensure that its strategic direction and plans, as updated from time to time, further the purpose of the arts for children and young people.

4. POWERS:

The Association shall have all the powers conferred by the Act.

5. MEMBERSHIP

5.1 Members of the Association shall be no more than ten persons appointed by the Minister of whom:

- (a) One shall be a nominee of the Minister;
- (b) One shall be a nominee representing the interests of the Department for Education in matters pertaining to Youth Arts and Arts in Education;
- (c) One shall be a First Nations representative elected in such manner as the Minister may approve;
- (d) Seven persons who are interested in Youth Arts shall be appointed by the Minister. The Minister may select persons from nominations by organisations actively involved in the area of youth arts. Such organisations may be invited by the Minister to make such nominations;
- (e) Not less than three Members shall be female and not less than three Members shall be male.

5.2 The Chief Executive shall be a non-voting Executive Officer of the Board and attend all the meetings of the Board.

5.3 (a) The terms of office of all Members shall be for such periods as the Minister may direct, up to a term of office of three consecutive years..

(b) The Minister may appoint a Member on the expiration of their term for a further term if the Member is eligible for reappointment in accordance with this constitution.

(c) A Member cannot be appointed for more than three consecutive terms.

5.4 The Minister may replace any Member of the Association and Board:

- (a) On the death of that Member or incapacity to act through medical reasons;
- (b) In the event that the Member is convicted of any criminal offence;
- (c) In the event of absence for more than three consecutive monthly Board meetings;
- (d) On receiving written notice of resignation from a Member;
- (e) On expiration of a Member's term of office provided that in the Minister's opinion sufficient Members are re-appointed to ensure continuity of the Association;
- (f) If, in the opinion of the Minister, the continued involvement of a Member is no longer beneficial to achievement of the objects of the Association.

5.5 A register of Members must be kept and contain:

- (a) the name and address of each Member;
- (b) the date on which each Member was admitted to the Association; and
- (c) if applicable, the date of and reason(s) for termination of membership.

6 THE CARCLEW BOARD:

- 6.1 The Board shall consist of all Members of the Association.
- 6.2 The Minister shall from time to time as is necessary appoint one Member to be Chairperson.
- 6.3 The Board shall be charged with the management of the Association, including its activities, assets (including without limitation its funds) and liabilities to achieve the objects specified in this Constitution by exercise of the powers specified in rule 4, and by rules specified elsewhere in this Constitution.
- 6.4 The Board shall present to the Minister a written report of its activities and achievement of objectives not less than once per calendar year and by no later than 30 September each year.
- 6.5 The Chairperson shall take the chair when present at any Board meeting. The Chairperson shall be ex officio member of all committees. In the Chairperson's absence, the Deputy Chairperson shall act instead.
- 6.6 The Board shall meet as often as required to conduct the business of the Association but not less than six times a year.
- 6.7 Seven days' notice in writing of every Board meeting shall be given to all Members of the Board in accordance with rule 11 specifying the location (or if the meeting is to be held using technology, the means by which the meeting will be held), date and time of the meeting and general nature of the business to be dealt with. The Chairperson (or in his/her absence, the Deputy Chairperson) may in any case of urgency cause a Board meeting to be summoned at shorter notice and without formal written notice.
- 6.8 A quorum for a meeting of the Board shall be such number that equals half the number of current Board Members plus one, and the quorum must be satisfied at the start of the meeting.
- 6.9 The Board's decision making is by consensus. Each Member of the Board shall have one vote and every question shall be decided by a majority of votes of the meeting. In the event of equality of votes the Chairperson or Deputy Chairperson (as the case may be) shall exercise the casting vote as well as deliberative vote.
- 6.10 If neither the Chairperson nor the Deputy Chairperson is present, the Board Members shall choose a Chairperson from one of the Board Members present to chair the meeting.
- 6.11 Minutes shall be kept of all proceedings of the Board.
- 6.12 Members of the Board will be entitled to such remuneration and expenses as determined by the Minister.
- 6.13 Board Members will declare any direct and indirect conflicts of interest in relation to the business of the Association. The Chairperson or Deputy Chairperson (as the case may

- be) will manage participation in decision making of the disclosing Member, in accordance with the Act.
- 6.14 Board Members will nominate and appoint one Member as Deputy Chairperson, as required.
- 6.15 An absence of any Board Member for more than three consecutive Board meetings must have prior approval of the Chairperson or Deputy Chairperson (as the case may be).
- 6.16 A meeting of the Board may be held using any one or combination of the following methods:
- a) in person;
 - b) by telephone;
 - c) by audio-visual linkup; or
 - d) using any technology consented to by all of the Board Members before or during the relevant meeting.
- 6.17 Any consent under rule 6.16(d) may be a standing consent.
- 6.18 If a Board Member gives his or her consent under rule 6.16(d), that Member may only withdraw the consent within a reasonable period before a meeting commences.
- 6.19 A Board Member is regarded as present at a Board meeting where that meeting is conducted by telephone, audio-visual linkup or other technology if the Board Member is able to hear, and to be heard by, all others attending the meeting.
- 6.20 A Board meeting conducted by telephone, audio-visual linkup or other technology will be deemed to be held at the place agreed on by the Board Members attending that meeting provided at least one of the Board Members present at the meeting was at that place for the duration of the meeting.
- 6.21 An original document, or a photocopy, facsimile or electronic copy of that document, which is in the possession of, or has been seen by, all Board Members attending a Board meeting before, or at the time of, that meeting is deemed to be a document tabled at that meeting.
- 6.22 Subject to this Constitution, the Board Members may adjourn and otherwise regulate Board meetings as they think fit.
- 6.23 The Board shall have authority to interpret the meaning of these rules and this Constitution and any other matter relating to the affairs of the Association on which this Constitution is silent.
- 6.24 The Board shall appoint a public officer as required by the Act (**Public Officer**).
- 6.25 The Board may pass a valid resolution without a Board meeting being held if all of the Board Members entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Board):
- (a) sign a document (which may include an electronic copy or counterpart copy); or
 - (b) provide affirmation in an email or series of emails,

that contains a statement that they are in favour of the resolution set out in the document or email, as the case may be.

6.26 The Board may constitute a sub-committee at any time and may delegate any of its powers to that sub-committee on the following basis:

- a) the sub-committee may consist of such members as the Board thinks fit, provided that at least one Board Member shall be appointed to such a sub-committee;
- b) any sub-committee so formed shall in the exercise of the powers so delegated conform to any rules or restrictions that may be imposed on it by the Board, and any charter or similar rules that such sub-committee has adopted with approval by the Board;
- c) a sub-committee may elect a chairperson of its meetings;
- d) if no such chairperson is elected, or if at any meeting the chairperson is not present within ten (10) minutes after the time appointed for holding the meeting, the members present may choose one (1) of their number to be chairperson of the meeting;
- e) a sub-committee may meet and adjourn as it thinks proper;
- f) questions arising at any sub-committee meeting shall be determined by a majority of votes of the members present and, in the case of an equality of votes, the question shall be deemed to be decided in the negative; and
- g) Notwithstanding any provision to the contrary in this Constitution:
 - (i) the Board may name, dissolve and vary the powers and composition of a sub-committee as the Board thinks fit;
 - (ii) each member of a sub-committee holds office on terms decided by the Board;
 - (iii) a sub-committee must exercise its powers, and generally conduct itself, in accordance with any directions given by the Board including, but not limited to, any directions concerning keeping minutes and reporting to the Board; and
 - (iv) subject to any directions by the Board, the provisions in this Constitution applying to meetings and resolutions of the Board apply, so far as they reasonably can and with any modifications reasonably necessary, to meetings of a sub-committee.

6.27 The Board may constitute one or more advisory, peer-review or similar panels of professionals or specialists at any time for any particular purpose, on the following basis:

- a) such panel shall not constitute a sub-committee of the Board;
- b) the Board will not delegate any powers of the Board to such panel and the panel will not have any powers of the Board, with the intent that such panel will only provide advice, reports or recommendations to the Board on an advisory basis for the Board to make its own determination as to the subject matter;

- c) the panel may consist of such members as the Board or the panel thinks fit having regard to the person's experience and expertise and the purposes of the panel, provided that at least one Board Member shall be appointed to such panel;
- d) the Board Member on the panel shall be the chairperson of its meetings;
- e) the panel may meet and adjourn as it thinks proper;
- f) the panel is, at all times, subject to the direction of the Board and must report to the Board as requested by the Board;
- g) the panel may determine its own rules and procedures in conducting its meetings, subject to any directions given by the Board; and
- h) a member of the Board will at all times be the chairperson of any such appointed advisory panel.

6.28 An act or decision of the Board will be valid even if it is later found that there was a defect in the appointment of a Board Member approving or participating in the act or decision.

7 PROTECTION OF CARCLEW BOARD AND OFFICERS:

Any Member of the Board, officer or other person appointed or employed by the Association will be indemnified by the Association for their actions if done bona fide in the exercise of powers or in the performance of duties under the Constitution and Rules of the Association. It shall be the duty of the Board out of the funds of the Association to pay and satisfy all costs, losses, damages expenses and liabilities incurred in the course of the business of the Association.

8 ALTERATIONS TO THE RULES OF THE CONSTITUTION:

The rules of this Constitution may only be altered with the prior approval of the Minister.

9 ACCOUNTING AND AUDITING:

9.1 The Association shall keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the Association, in accordance with the Act.

9.2 If the Association is a Prescribed Association:

- a) the accounts, together with the auditor's report on the accounts, the Board's statement and the Board's report, shall be laid before the Members at the annual general meeting of the Association;
- b) the annual (periodic) return shall be lodged with Consumer and Business Services within six months after the end of each Financial Year. It must be accompanied by a copy of the accounts, the auditor's report, the Board's statement, and the Board's report;
- c) at each annual general meeting of the Association, the members shall appoint a person to be auditor of the Association. The auditor of the Association shall hold office until the next annual general meeting and is eligible for re-appointment. If an appointment is not made at an annual general meeting, the Board shall appoint an auditor for the current Financial Year.

10. MEETINGS OF THE ASSOCIATION

- 10.1 The Association shall call an Annual General Meeting in accordance with the Section 39 of the Act. The order of the business at the meeting shall be:
- (i) confirmation of the minutes of the previous Annual General Meeting;
 - (ii) consideration of the Association's accounts and the Auditor's report (if any);
 - (iii) if the Association is a Prescribed Association, the appointment of auditors; and
 - (iv) any other business requiring consideration by the Association in general meeting.
- 10.2 The Board may call a Special General Meeting of the Association at any time.
- 10.3 Notice of general meetings of the Association
- a) Subject to 10.3(b), at least 7 days' notice of any general meeting shall be given to Members. The notice shall set out where and when the meeting will be held, and particulars of the nature and order of the business to be transacted at the meeting;
 - b) Notice of a meeting at which a special resolution is to be proposed shall be given at least 21 days prior to the date of that meeting;
 - c) A notice of a meeting may be given by the Association to any Member in accordance with rule 11.
- 10.4 Proceedings at general meetings
- a) A quorum for a general meeting shall be such number that equals half the number of current Members plus one, and the quorum must be satisfied at the start of each meeting. The Chairperson shall preside as chairperson at a general meeting of the Association. If the Chairperson is not present, the Deputy Chairperson shall preside as chairperson at the general meeting instead.
 - b) If the Chairperson and the Deputy Chairperson are both not present at the general meeting, or they are present but decline to take the chair of the meeting, the Members may choose a Board Member or one of their own number to be the chairperson of that meeting.
- 10.5 Voting at general meetings
- a) Subject to this Constitution, every Member of the Association has only one vote a general meeting of the Association.
 - b) Subject to this Constitution, a question for decision at a general meeting, other than a special resolution, must be determined by a majority of Members who vote in person or, where proxies are allowed, by proxy, at that meeting.
 - c) Unless a poll is demanded by at least five Members, a question for decision at a general meeting must be determined by a show of hands.
 - d) If a poll is demanded by at least five Members, it must be conducted in a manner specified by the person presiding and the result of the poll is the resolution of the meeting on that question.

- e) A poll demanded for the election of a person presiding or on a question of adjournment must be taken immediately, but any other poll may be conducted at any time before the close of the meeting.
- 10.6 Special and ordinary resolutions
- a) A special resolution has the meaning given to that term in the Act.
 - b) An ordinary resolution is a resolution passed by a simple majority at a general meeting.
- 10.7 A Member shall be entitled to appoint in writing a natural person who is also a Member to be their proxy, and attend and vote at any general meeting of the Association.
- 10.8 Proper minutes of all proceedings of general meetings of the Association shall be entered within one month after the relevant meeting in minute books kept for the purpose. The minutes kept pursuant to this rule shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting at which the minutes are confirmed.
- 10.9 Where minutes are entered and signed they shall, until the contrary is proved, be evidence that the meeting was convened and duly held, that all proceedings held at the meeting shall be deemed to have been duly held, and that all appointments made at a meeting shall be deemed to be valid.
- 10.10 For the avoidance of doubt, the rules in this rule 10 do not apply to meetings of the Board convened in accordance with rule 6 of this Constitution.

11 PUBLIC OFFICER AND NOTICES:

- 11.1 The Public Officer of the Association shall be the Chief Executive of Carclew unless otherwise directed by the Board.
- 11.2 The Association shall always have an address for service of notices and shall give written notice to every Member of such an address and of every change of such address within seven days after any change is made.
- 11.3 Every notice or communication made to the Association shall be deemed for all purposes to have been duly given or made if given or made in writing and either handed personally to the Chairperson, Deputy Chairperson or Public Officer or enclosed in an envelope with postage duly prepaid and duly addressed and delivered to the Association's address for service in the ordinary course of post.
- 11.4 Every notice or communication made by the Association to any Member shall be deemed for all purposes to have been duly given or made if given or made in writing, addressed to the relevant Member at the Member's address (including any address appearing in the register of Members pursuant to rule 5.5) and:
- a) delivered to that Member's address;
 - b) sent by registered pre-paid mail to that Member's address; or
 - c) sent by email to that Member's email address.
- 11.5 A notice or communication in accordance with this rule 11 is given and received:

- c) if delivered to a Member's address, on the day of delivery if it is a day on which banks are open for business in South Australia but is not a Saturday or Sunday (**Business Day**), otherwise on the next Business Day;
- d) if sent by registered pre-paid mail, on the third Business Day after posting; and
- e) if sent by email to a Member's email address and no failure message was received, then on the day the email was sent if it is a Business Day, otherwise on the next Business Day.

12 PATRON:

The Board may recommend appointment of a Patron to the Minister, subject to written agreement of the nominee to act in the capacity.

13 WINDING UP OR TRANSFER OF ASSETS AND LIABILITIES:

The Association may be wound up in the manner provided for in the Act.

14 SEAL

- 14.1 The Association shall have a Seal and cause the Seal to be affixed to any document requiring such authentication including contracts, notices of employment and dismissal, and any other documents which at the discretion of the Board may require such action.
- 14.2 No such document shall be deemed duly authenticated unless the Seal shall have been affixed in the presence of one Member of the Board and of the Public Officer of the Association. When the seal has been affixed to a document, the Public Officer shall advise the Board at its next meeting.