

CONSTITUTION

Mardi Gras Arts Ltd

ACN 158 800 018

Corporations Act 2001 (Cth)

A Company Limited by Guarantee

12 September 2015

CHAPTER I

- 1.1 The name of the company is Mardi Gras Arts Ltd.
- 1.2 The liability of members is limited by guarantee to \$1 per member.

INTERPRETATION & ALTERATION

- 1.3 In these articles the following terms have the following meaning unless the context otherwise requires.
 - “**Mardi Gras Arts**” means Mardi Gras Arts Ltd ACN: 158 800 018.
 - “**Sydney Gay and Lesbian Mardi Gras**” means Sydney Gay and Lesbian Mardi Gras Limited ACN: 102 451 785
 - “**Candidate**” means a member of Sydney Gay and Lesbian Mardi Gras Limited who has nominated to participate in an election for positions on the Board of Mardi Gras Arts at a Sydney Gay and Lesbian Mardi Gras Limited’s Annual General Meeting.
 - “**Company**” means Mardi Gras Arts.
 - “**Officer of an organisation**” means:-
 - (a) the public officer of the organisation;
 - (b) a secretary, executive officer or employee of the organisation.
 - “**Organisation**” means a society, club, association (whether incorporated or unincorporated), collective, body corporate or similar body including a company incorporated pursuant to the Companies Act but does not include a natural person.
 - “**Cultural**” means the set of shared attitudes, values, goals and practices, including artistic, that characterises a community or group of people.
 - “**Artistic**” means the encouragement of activities of an artist(s) primarily based on painting, sculptural, performance, dance, musical expression, musical performance, art, photography and literature.
 - “**Member**” means any person for the time being recorded in the Member Register of the Company.
- 1.4 In this Constitution, unless it is inconsistent with the context:
 - (a) The singular includes the plural and vice versa.
 - (b) Words referring to any gender include all other genders.
 - (c) Any reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and any orders, regulations, instruments or other subordinate legislation made under the statute or statutory provision.
 - (d) All references to articles, clauses, schedules, annexures and explanatory notes are to articles and clauses of and schedules, annexures and explanatory notes to this Constitution.
 - (e) Where any time period is required to be calculated from a specified date, that date will be excluded from the calculation.
 - (f) Unless the context otherwise requires, words given a certain meaning in the Corporations Act 2001 or in the Acts Interpretation Act 1901 (Cwlth) will have that meaning in this Constitution.
 - (g) Calculated numbers, that are not whole numbers, shall be rounded up to the nearest whole number.
 - (h) Any requirement of this Constitution that refers to a sexuality or gender of any person or group of persons will mean the sexuality or gender with which that person or group identifies.

[Notation: For the purposes of determining gender and sexuality the Constitution adopts a self-identification test.]
- 1.5 Any reference in this Constitution to a provision of the Corporations Act 2001, must be read, to the extent practicable, to that provision of the Corporations Act or the Act as amended, replaced or re-enacted.

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- 1.6 Where in this Constitution a body (such as a constituted group) consisting of more than 1 person is given any power, or is required to exercise any discretion, or form any view, it will be taken to have done so by passing an ordinary resolution to that effect, unless the contrary is indicated.
- 1.7 If any document or thing is required by this Constitution to be lodged with the Secretary, the requirement may be satisfied only by posting the document to Mardi Gras Arts' postal address by pre-paid post, or by delivering the document to Mardi Gras Arts' principal place of business during Mardi Gras Arts' ordinary business hours, unless an additional method is prescribed in a particular case or cases.
- 1.8 Unless this Constitution states to the contrary any 1 or more of the provisions of this Constitution may be:
- (a) altered;
 - (b) rescinded;
 - (c) replaced; or
 - (d) may be added to,
- but only by special resolution.

[Notation: A special resolution is defined by the Corporations Act as a resolution passed by at least 75% of the votes cast by voters. An ordinary resolution is a resolution passed by at least 50% of the votes cast by voters entitled to vote]

- 1.9 The provisions of this Constitution replace the current and any future replaceable rule or rules to the extent permitted by the Corporations Act.

CHAPTER II

OBJECTS

- 2.1 The primary and sole objective of Mardi Gras Arts Limited is to produce an annual arts and cultural festival that encompasses:
- Literature
 - Design
 - Crafts
 - Performing Arts
 - Radio, Television & Film
 - Music
 - Community Arts
 - Visual Arts
 - Moveable Cultural Heritage

Consistent with Subdivision 30-F and Section 30-300 of the Income Tax Assessment Act 1997 (ITAA97) including funding, staging and support of the following activities:

- The annual Mardi Gras Parade in Sydney
 - The annual Mardi Gras Arts Festival
 - Exhibitions of other related Art, Design, Crafts and Cultural Heritage consistent with these objects
 - Support of related projects in Literature, Music and Performance Art consistent with these objects
- 2.2 Mardi Gras Arts Ltd is a non-profit organisation.
- 2.3 The assets and income of the organisation shall be applied solely in furtherance of the above-mentioned objects and no portion shall be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the organisation.

CHAPTER III

PUBLIC GIFT FUND

- 3.1 Mardi Gras Arts wishes to establish and maintain a public gift fund for the purpose of supporting and funding the Objects of the organisation as set out in Clause 2 above. Specifically:

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- (a) Mardi Gras Arts will establish and maintain a public fund for the purpose of receiving tax deductible donations following entry to the Register of Cultural Organisations (ROCO) and endorsement as a Deductible Gift Recipient (DGR) by the Australian Taxation Office.
- (b) The fund will be titled Mardi Gras Parade & Festival Gift Fund.
- (c) 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 Company and will only be used to further the principal purpose of the Company. Investment of monies in this fund will be made in accordance with guidelines for public funds as specified by the Australian Taxation Office.
- (d) The fund will be administered by a management committee or a subcommittee of the management committee, the majority of whom, because of their tenure of some public office or their professional standing, have an underlying community responsibility, as distinct from obligations solely in regard to the cultural objectives of Mardi Gras Arts.
- (e) No monies/assets in this fund will be distributed to members or office bearers of the Company, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.
- (f) The Department responsible for the administration of the Register of Cultural Organisations will be notified of any proposed amendments or alterations to provisions for the public fund, to assess the effect of any amendments on the public fund's continuing Deductible Gift Recipient status.
- (g) Receipts for gifts to the public fund must state:
 - the name of the public fund and that the receipt is for a gift made to the public fund;
 - the Australian Business Number of the company;
 - the fact that the receipt is for a gift; and
 - any other matter required to be included on the receipt pursuant to the requirements of the Income Tax Assessment Act 1997.

CHAPTER IV

MEMBERSHIP, THE REGISTER, EXPULSION, AND APPEALS

Division 1 - Membership

- 4.1 The members of Mardi Gras Arts Ltd are persons who apply for and are admitted to membership in accordance with the Constitution of Mardi Gras Arts.
- 4.2 There shall be no age restriction on who may be a member of Mardi Gras Arts
- 4.3 The following procedure shall be followed in respect of the admission of any person (in this Chapter referred to as the "Applicant") to membership of Mardi Gras Arts, namely:
 - (a) The Applicant must complete an application (in this Chapter referred to as the "Application") that may include a signature, electronic or otherwise, or other such means of identification, where the Application is in the form prescribed from time to time by the Board;
 - (b) The Applicant must agree to support the aims and the objectives of Mardi Gras Arts set out in this Constitution. It shall be sufficient compliance for the purposes of this article if the Applicant signs, by electronic or other means, a statement, or provides some other indication to acknowledge their support of the objectives, in such manner as the Board may from time to time determine.
- 4.4 Each Application for membership shall be placed before the Board of Mardi Gras Arts within 45 days.
- 4.5 The Mardi Gras Arts Board may in respect to the Application for membership:
 - (a) accept the Application; or
 - (b) reject the Application where two thirds of the Board currently in office so determine; or
 - (c) refer the Application to the Applicant for further explanation or clarification but not so as to exceed the 45 day period prescribed in the immediately preceding article.

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- 4.6 In the event the Board fails to accept or reject the Application for membership within 45 days of the Application being placed before the Board, the Application shall be deemed to have been rejected.
- 4.7 No Application may be considered by the Board during the period from where:
- (a) the Board itself has requisitioned or has been notified that members or directors have requisitioned a general meeting; or
 - (b) within 14 days of the date fixed for the convening of an Annual General Meeting, until after the conclusion of that general meeting.
- 4.8 During the period or periods referred to in the immediately preceding article the 45 days by which the Board must make a determination about an Application for membership shall be suspended and those periods shall not be counted as part of the 45 day period.
- 4.9 Upon the acceptance of an Application by the Board the Applicant will become a member of Mardi Gras Arts upon the Applicant's name being entered in the Register of Members.
- 4.10 Upon the rejection of an Application by the Board the Board must as soon as is possible:
- (a) cause the Applicant to be notified in writing, advising of the Board's decision to reject the Application; and
 - (b) inform the Applicant of the right of appeal under this Chapter.
- 4.11 The Board may from time to time fix any fee to be paid by Applicants for membership ("the Entrance Fee").
- 4.12 The Board may from time to time fix any fee by way of any annual membership fee the payment of which may be a condition for ongoing membership in the Company.
- 4.13 The Board has the power to waive entirely or fix fees at concession rates in respect to Applicants for Membership and members of the Company as the Board determines.

Division 2 – Period of Membership

- 4.14 The period of membership of Mardi Gras Arts Ltd is as follows:
- (a) for those Sydney Gay and Lesbian Mardi Gras members who join or renew Sydney Gay and Lesbian Mardi Gras membership become Members of Mardi Gras Arts, and the membership of Mardi Arts will expire at the same time as the membership of Sydney Gay and Lesbian Mardi Gras.
- 4.15 At a reasonable time before the expiry of a members' membership of Mardi Gras Arts must cause to be sent to each member a notice of renewal in a form prescribed by the Board from time to time ("a Renewal Form"), setting out:-
- (a) the annual membership fee for the following year; and
 - (b) the method of renewal.
- 4.16 Membership of Mardi Gras Arts may be renewed by the member:
- (a) complying with the method of renewal prescribed by the Board; and
 - (b) providing the annual membership fee as prescribed in the Renewal Form In cleared funds in accordance with the date and method of payment specified on the form.
- 4.17 A person ceases to be a member of Mardi Gras Arts:-
- (a) if written notice of the person's resignation from membership has been lodged with the secretary;
 - (b) if that person has not effected membership renewal within 13 months of becoming a member or renewing their membership;
 - (c) if that person is expelled from Membership; or
 - (d) if that person dies.
- 4.18 A person that is currently a Life Member of Sydney Gay and Lesbian Mardi Gras shall be a Life Member of Mardi Gras Arts.

Division 3 – Expulsion of a Member

- 4.19 If the Board is of the view that a member of Mardi Gras Arts has:
- (a) materially refused or neglected to comply with a provision of this constitution; or
 - (b) persistently and wilfully acted in a manner prejudicial to the interests of the Company; or
 - (c) acted in a manner inconsistent with the Objects of the company the Board may by a resolution:
 - (d) agreed to by at least the majority of the directors then in office; and
 - (e) stating the grounds concerned and the reasons for the Board's view, determine that the member should show cause why the member should not be expelled from membership.
- 4.20 As soon as practicable after the Board determines that a member should show cause why the member should not be expelled, the Secretary must:
- (a) so notify the member in writing, providing a copy of the Board's resolution under the immediately preceding article; and
 - (b) inform the member of the member's right to request a hearing before the Board and that the request must be lodged within 7 days.
- 4.21 The right to a hearing before the Board is as follows:
- (a) The member may within 7 days of the member being informed of the member's right to a hearing require the Board to consider the member's submissions as to why the member should not be expelled from membership.
 - (b) The hearing must take place not less than 14 days nor more than 35 days after the member has informed the Secretary that the member wishes the Board to consider submissions from the member.
 - (c) The Board must give the member or the member's representative, or both, a reasonable opportunity to make oral submissions at the hearing.
 - (d) The Board must consider:
 - (i) oral submissions made by the member or the member's representative, or both; and
 - (ii) written representations lodged by the member with the Secretary prior to the hearing.
 - (e) The deliberations of the Board itself may in the Board's absolute discretion be in private and in the absence of the member and the member's representatives;
 - (f) Where:
 - (i) the member has not requested a hearing within 7 days; or
 - (ii) the member has so requested a hearing and that hearing is completed, the Board must determine whether the member is to be expelled.
- 4.22 A resolution to expel a member must be carried by at least two-thirds of the directors then in office.
- 4.23 As soon as practicable after the Board determines whether or not the member is to be expelled, the Secretary must notify the member in writing of the Board's determination.
- 4.24 Where the Board has determined to expel the member, the Secretary must inform the member of the right of Appeal under Division 3.
- 4.25 Where the Board has resolved to expel a member:
- (a) the expulsion will be suspended until the expiry of the 7 day period after the member has been notified of their appeal right; and
 - (b) where the member lodges an Appeal, until such time as the Appeal Panel decides the outcome of the Appeal.

Division 4 – Right of Appeal

- 4.26 In this Chapter
- (a) an Applicant whose Application for membership has been rejected under Division 1; or
 - (b) a member where the Board has determined to expel under Division 3 is referred to as the "Appellant".
- 4.27 In this Division:

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- (a) an Applicant whose Application for membership has been rejected under Division 1; or
- (b) a member whom the Board has determined to expel under Division 3; is referred to as the "Appellant".

4.28 There shall be an Appeal Panel:

- (a) made up of not less than 3 and not more than 5 members (not being a director) nominated by the Secretary;
- (b) the purpose of which is to hear and determine the Appellant's appeal under this Division.

4.29 The right of appeal is as follows:

- (a) The Appellant may within 7 days of the Appellant being informed of the Appellant's right to Appeal require the Appeal Panel to reconsider the Board's decision at a meeting to be held not less than 14 days nor more than 35 days after lodging of an Appeal Notice.
- (b) If an Appeal Notice is lodged in accordance with the preceding paragraph, the Appeal Panel must meet within the time-frame prescribed in that paragraph, having given the Appellant not less than 7 days' notice of the date, time and place of the meeting.
- (c) The Appeal Panel must give the Appellant or the Appellant's representative, or both, a reasonable opportunity to make oral submissions at the meeting.
- (d) The Appeal Panel must consider:
 - (i) oral submissions made by the Appellant or the Appellant's representative, or both, at the meeting;
 - (ii) written representations lodged by the Appellant with the Secretary prior to the meeting; and
 - (iii) any submission lodged by the Board.
- (e) The Appellant is free to make oral and written submissions before the Appeal Panel that were not made by the Appellant at the hearing before the Board that is being appealed from.
- (f) Where the Appeal to the Appeal Panel is by a member against the decision of the Board for the member's expulsion, the Appeal Panel must by ordinary resolution at that meeting determine whether the grounds for expulsion:
 - (i) have been established; or
 - (ii) have not been established.
- (g) Where the Appeal Panel determines that the grounds for expulsion have been Established the Appellant shall be expelled from membership.
- (h) Where the Appeal Panel determines that the grounds for expulsion have not been established the expulsion is rescinded ab initio.

[Notation: ab initio is a legal term for which there is no precise English equivalent. In this context ab initio means as if the expulsion never happened.]

- (i) Where the Appeal to the Appeal Panel is by an Applicant for membership against the decision of the Board refusing that Application, the Appeal Panel must by ordinary resolution at that meeting determine whether the grounds for refusal:
 - (i) have been established; or
 - (ii) have not been established.
- (j) Where the Appeal Panel determines that the grounds for rejection have been Established the Appellant's Application for membership shall be rejected.
- (k) Where the Appeal Panel determines that the grounds for rejection have not been established and the Appellant lodges with the Secretary, within 30 days of receiving notice of the Appeal Panel's resolution, payment of any Membership Fees, the Appellant's name shall be entered in the Register of Members as a member of Mardi Gras Arts.
- (l) The Secretary must forthwith notify the Appellant in writing of the determination made by the Appeal Panel.
- (m) All matters concerning the conduct of the meeting, procedural issues and matters concerning the deliberations of the Appeal Panel shall be determined by the Appeal Panel.

4.29 Despite anything to the contrary in this Constitution and despite any rule of law or equity to the contrary:

- (a) subject to the next succeeding paragraph, the meeting referred to must be open to members;

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- (b) the Appellant may in the Appellant's Appeal Notice require that the meeting not be open, except to the Appellant (and, if applicable, the Appellant's representative or such person or persons the Appellant nominates), in which case the meeting will be restricted to such persons as the Appellant has nominated;
- (c) the deliberations of the Appeal Panel itself may in the Appeal Panel's absolute discretion be in private and in the absence of the Appellant and the Appellant's representatives; and
- (d) at the meeting, if open, all matter published for its purposes will be subject to qualified privilege under the law relating to defamation.

CHAPTER V

GENERAL MEETINGS

Division I – Calling meetings

- 5.1 Mardi Gras Arts must hold general meetings in accordance with the Corporations Act.
- 5.2 An Annual General Meeting means an Annual General Meeting of the Company that section 250N of the Corporations Act requires to be held. In this Constitution general meetings are either Annual General Meetings or general meetings.
- 5.3 A general meeting must be convened by the Directors where:
 - (a) members representing at least 5% of the members entitled to vote at a general meeting so request; or
 - (b) at least 2 Directors so request; or
 - (c) the Board so requests
- 5.4 Any requisition for a general meeting must:
 - (a) be in writing;
 - (b) state any resolution to be proposed at the meeting;
 - (c) be signed by the members or Directors making the request; and
 - (d) be given to the Secretary.
- 5.5 Separate copies of a document setting out the request for a general meeting may be used for signing by members if the wording of the request is identical in each copy.

Division II – Notice periods

- 5.6 Upon the receipt of a request for a general meeting the Secretary must convene a general meeting to take place not less than 35 days nor more than 48 days from the date of the receipt by the Company of that requisition.
- 5.7 The Company may call a meeting at any time on shorter notice if in the case of the annual general meeting all of the members entitled to attend and vote at the annual general meeting agree before the holding of the meeting and in the case of any other general meeting if Members with 95% of the votes that may be passed at the meeting agree before the meeting.
- 5.8 Except in the case of a resolution to remove an auditor, the Company may pass a resolution without holding a general meeting provided that all of the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution as set out in the document.
- 5.9 Notice of general meeting must be given:
 - (a) not less than 21 days before the general meeting concerned;
 - (b) in writing to:
 - (i) each member at the address then current for that member on the Register; and
 - (ii) Mardi Gras Arts' auditor at the time of the notice.

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- 5.10 The notice of the general meeting must in each case specify:
- (a) the date, time and place of the meeting;
 - (b) whether the meeting is an Annual General Meeting or a general meeting;
 - (c) the nature of any business to be transacted and the text, proposer and seconder of any resolutions to be put to the meeting;
 - (d) if it is a general meeting, the manner in which it has been required to be convened;
 - (e) if it is an Annual General Meeting, the matters required to be transacted or other information that must be given to members in accordance with this Chapter; and
 - (f) if there are any resolutions to be put, a form of proxy.

Division III – Notice of Business

- 5.12 Where there is only 1 member, that member may, and where there is more than 1 member, any 2 members may, at any time, by notice (the "Notice of Business") in writing lodged with the Secretary, require that:
- (a) the business; or
 - (b) any resolutions,
- specified in the Notice of Business be included in the next issued notice calling a general meeting.
- 5.13 Where an Annual General Meeting is to be convened, the Secretary, at least 42 days before the date appointed for the holding of that Annual General Meeting, must give notice to members of the last day by which members may lodge a Notice of Business so that the matters specified in the Notice of Business can be dealt with at that Annual General Meeting.
- 5.14 The Notice referred to in the immediately preceding article shall be given in writing to each member
- 5.15 The Secretary must include in the Notice calling the general meeting those matters contained in the Notice of Business unless to do so would be impracticable because of any time requirement in respect to the notification of general meetings.
- 5.16 Except for a resolution proposed by the Board every resolution to be put to a general meeting, whether ordinary or special, must have a proposer only if there is only 1 member and also a seconder if there is more than 1 member of Mardi Gras Arts.
- 5.17 If a Notice of Business includes any resolutions, and no proposer and seconder of the resolution are nominated, the members (taken in the order in which names appear on the Notice of Business) lodging the Notice of Business will be taken to be the proposer and seconder respectively of the resolution.
- 5.18 Where a resolution is put to a general meeting that is proposed:
- (a) by members:
 - (i) A memorandum explaining the purpose and effect of the resolution (the "Explanatory Memorandum") prepared by those members proposing the resolution shall either be enclosed with the notice calling the general meeting or shall be circulated with other correspondence which the Company must forward to members.
 - (ii) The cost of reproducing the Explanatory Memorandum and the cost of postage incurred for circulating the Explanatory Memorandum shall be borne by the Company unless the Secretary is of the view that the costs of reproduction and postage are so excessive that the Company ought not bear them.
 - (iii) The Secretary may refuse to circulate the Explanatory Memorandum if the

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Secretary is of the view it contains subject matter that is scandalous, defamatory or irrelevant for the purposes of the resolution.

- (iv) Should the Board oppose the adoption of the resolution, the Board may circulate among members a memorandum explaining the position of the Board but such memorandum must also set out, in the view of the Board, the case for and against the adoption of the resolution.
- (b) by the Board:
 - (i) The notice given to members of the resolution must clearly state that the resolution is proposed by the Board.
 - (ii) An Explanatory Memorandum explaining the purpose and effect of the resolution shall either be enclosed with the notice calling the general meeting or shall be circulated with other correspondence which the Company must forward to members.
 - (iii) An Explanatory Memorandum prepared by the Board must set out, in the view of the Board, the case for and against the adoption of the resolution.

Division IV – Nature of business transacted

- 5.19 The business that may be transacted at an Annual General Meeting or a general meeting is:
- (a) the consideration of the accounts and balance sheet;
 - (b) the report of the Directors;
 - (c) the report of the auditors;
 - (d) if required at that particular meeting by the Corporations Act, the appointment of auditors and the fixing of their remuneration; and
 - (e) all items of business submitted by the Board or the members in accordance with this Chapter.
- 5.20 Business, which would result in a change to the Constitution, may not be conducted at an Annual General Meeting or General Meeting of the Company, unless such business is the result of a general resolution of an Annual General Meeting or General Meeting of Sydney Gay and Lesbian Mardi Gras.

CHAPTER VI

PROCEEDINGS AT GENERAL MEETINGS

Division I - Quorum

- 6.1 No business may be transacted at a general meeting unless a quorum is present when the meeting proceeds to business. A quorum, present in person or by proxy, is the lesser of:
- (a) 50% of the number of members or
 - (b) 50 such members.
- 6.2 If half an hour after the time appointed for a general meeting to commence a quorum is not present, the meeting:
- (a) if convened as a general meeting will be dissolved; or
 - (b) the Annual General Meeting, will be adjourned:
 - (i) to the same day in the next week at the same time and place; or
 - (ii) at such time and place as the Chair may determine and communicate promptly to all members.
- 6.3 If at any adjourned meeting a quorum is not present half an hour after the time appointed for the meeting to commence, a quorum is 50% of the number of members rounded up to a whole number eligible to vote at the meeting.

Division II – Chair of meeting

- 6.4 At the commencement of each general meeting a Member nominated by the Board shall take the Chair.

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- 6.5 The Chair:
- (a) may, with the consent of the meeting; and
 - (b) must, if so directed by the meeting, adjourn any general meeting, for not more than 30 days;

No business may be transacted at the meeting as adjourned other than business left unfinished at the time of the adjournment. Notice of the adjournment must be given to all members.

Division III - Voting

- 6.5 Any resolution at a general meeting will be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll is demanded by:
- (a) the Chair; or
 - (b) at least 10% of the number of members who are present in person or by proxy.
- If no poll is demanded, any declaration by the Chair as to the vote (for example, that it was carried, or carried in a particular way, or lost) will be conclusive.
- 6.7 The following applies to any poll:
- (a) The demand for it may be withdrawn.
 - (b) It will be taken as the Chair directs.
 - (c) If it relates to a resolution for the adjournment of the meeting, it must be taken immediately.
- 6.8 A member may vote in person or by proxy. In the case of an equality of votes (whether on the show of hands or on a poll) the question will be answered in the negative.
- 6.9 The following applies to proxies:
- (a) A proxy may only be appointed in writing.
 - (b) A proxy holder need not be a member.
 - (c) A person may hold more than 1 proxy.
 - (d) The form of appointment of a proxy must be in the form of Schedule 1, or in as similar a form to that as the circumstances allow.
 - (e) Unless otherwise instructed on the form of appointment, the proxy holder may vote as the proxy holder wishes.
 - (f) Unless Mardi Gras Arts has received notice in writing to the contrary prior to the meeting concerned, a vote by a proxy holder is valid despite the prior:
 - (i) death or unsoundness of mind of; or
 - (ii) withdrawal of the appointment by, the member giving the proxy.
 - (g) The form of appointment of a proxy must be lodged with the Secretary no later than the close of business (05:00 pm) 1 business day prior to the appointed date of the general meeting concerned (whether the meeting is an adjourned meeting or has been convened as an Annual General Meeting or general meeting).
- 6.10 In determining whether a resolution is carried as an ordinary or a special resolution the calculation of the total number of members who have voted shall be the total number of valid votes that have been cast in respect to that resolution by members in person or by Proxy. Members who have attended the general meeting and not cast a vote shall not be counted when determining if a resolution has been carried or carried as a special resolution.

[Notation: an abstention is not a vote.]

Division IV – General Meetings of Sydney Gay and Lesbian Mardi Gras

- 6.11 The Board of Mardi Gras Arts must request Sydney Gay and Lesbian Mardi Gras to include, in its Annual General Meeting, an election of Candidates. After the election of Candidates at an Annual General Meeting of Sydney Gay and Lesbian Mardi Gras, the successful Candidates must be appointed directors of Mardi Gras Arts by Sydney Gay and Lesbian Mardi Gras.

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- 6.12 Sydney Gay and Lesbian Mardi Gras must call a general meeting if it receives a request to hold a general meeting, other than for the purposes of Candidate elections, made by:
- (a) at least 2 directors of Mardi Gras Arts who so request; or
 - (b) the Board that so requests
 - (c) In the following circumstances where the Secretary so requests:-
 - (i) there has been a complaint, grievance or dispute (“the Complaint”) regarding the acts or omissions of a director and the Complaint has been made by another director, office bearer, Member (including any member of a Working Group) or employee of Mardi Gras Arts;
 - (ii) if an internal complaint, grievance or dispute procedure is in place – the Secretary is satisfied that the procedures have been exhausted;
 - (iii) the Complaint remains unresolved; and
 - (iv) the Secretary is satisfied that should the Complaint be left unresolved the operations of the Board may be impeded.

CHAPTER VII

DIRECTORS AND OFFICE-HOLDERS

Division I – Candidates and Director positions

- 7.1 Only persons who are members of Sydney Gay and Lesbian Mardi Gras may become Candidates and be appointed directors of Mardi Gras Arts.
- 7.2 The directors of Mardi Gras Arts are those successful Candidates elected at an Annual General Meeting of Sydney Gay and Lesbian Mardi Gras or appointed as directors in accordance with the provisions of this Constitution.
- 7.3 Mardi Gras Arts is governed by the Board of Directors of Sydney Gay and Lesbian Mardi Gras.
- 7.4 At each Annual General Meeting of Sydney Gay and Lesbian Mardi Gras Limited the directors of Mardi Gras Arts shall retire. A retiring director may stand as a Candidate in the election at that Annual General Meeting.

Division II – Removal of a Director

- 7.5 The members of Sydney Gay and Lesbian Mardi Gras may by ordinary resolution at a general meeting require Sydney Gay and Lesbian Mardi Gras Limited to, and Sydney Gay and Lesbian Mardi Gras Limited shall:
- (a) remove one or directors of Mardi Gras Arts from office; and
 - (b) appoint another member of Sydney Gay and Lesbian Mardi Gras recommended by the Mardi Gras Arts Nominations and Governance Committee to serve the balance of the term of the Mardi Gras Arts director so removed.
- 7.6 A director of Mardi Gras Arts ceases to be a director if that director has been removed from office by resolution of the members of the Company or Sydney Gay and Lesbian Mardi Gras in general meeting.
- [Notation: The Corporations Act prescribes mandatory requirements that must be followed to remove a director from office. These requirements include a special notice period in respect to a resolution to remove a director and the director’s right to put a case to members. See section 203D of the Corporations Act.]*
- 7.7 Where members of the Company propose to call a meeting of the Company to remove a director of the Company, the members of the Company must first ensure Sydney Gay and Lesbian Mardi Gras hold a General Meeting at which a resolution to remove the Company director is considered. Once that General Meeting is held and the resolution passed, then and only then shall the members of the Company call a General Meeting of the Company to pass a similar resolution to remove that director. At the General Meeting of Sydney Gay and Lesbian Mardi Gras, the Company director referred to in the

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motion shall be given all the rights that a director of Sydney Gay and Lesbian Mardi Gras would have to present their case to members at that meeting.

- 7.8 Where members of Sydney Gay and Lesbian Mardi Gras in general meeting pass an ordinary resolution removing directors of Mardi Gras Arts from office and that resolution has (or will have) the effect of:-
- (a) removing the entire Board from office, or;
 - (b) reducing the number of the directors to less than the prescribed number pursuant to the Corporations Act then the following provisions shall apply:-
 - (i) the Secretary of Mardi Gras Arts may appoint himself or herself and such other members of Sydney Gay and Lesbian Mardi Gras as the Secretary nominates to increase the number of directors to the prescribed minimum provided by the Corporations Act and those persons so appointed (including the secretary) shall act as caretakers ("the interim Board") for the purpose of convening another meeting of the members for the purpose of electing a new Board (and the procedures provided by Chapter VI Division IV will apply to that election);
 - (ii) as caretakers, the interim Board will carry out the functions of the Board but not undertake any new policies;
 - (iii) the interim Board shall have all the powers provided to a receiver pursuant to Section 420 of The Corporations Act and shall be indemnified out of the assets of the company in relation to their exercise of any of their powers and duties as caretakers and Directors where such acts or omissions are made in good faith or where the interim Board has received advice from an advisor whose opinion it was reasonable for the interim Board to act upon.

Division III – Vacant Director position

- 7.9 The directors may at any time appoint any person to be a director to fill a vacancy on the Board. Any director so appointed holds office only until the next following Annual General Meeting of Sydney Gay and Lesbian Mardi Gras and is then eligible for re-election.
- 7.10 Where a vacancy on the Board of Mardi Gras Arts is to be filled by the Board the following provisions apply:
- (a) The Secretary will invite members of Sydney Gay and Lesbian Mardi Gras to submit their expressions of interest to be appointed a director of Mardi Gras Arts by placing:
 - (i) a notice in a public area of Mardi Gras Arts' principal place of business; and
 - (ii) a notice on any website conducted by Mardi Gras Arts or Sydney Gay and Lesbian Mardi Gras such that the notice is accessible from the website's home page; and
 - (iii) by paid advertisement in the Sydney Star Observer or such similar publication that circulates within the lesbian, gay, bisexual, transgender, queer and intersex communities of Sydney.
 - (b) The Secretary of Mardi Gras Arts shall place before the Board of Mardi Gras Arts the names of all members of Sydney Gay and Lesbian Mardi Gras who have submitted their expression of interest together with any supporting material the Secretary may have received with the expressions of interest.
 - (c) The Board of Mardi Gras Arts may:
 - (i) fill a vacancy on the Board of Mardi Gras Arts from among those members of Sydney Gay and Lesbian Mardi Gras who have submitted expressions of interest;
 - (ii) refer the nominees to the Mardi Gras Arts Nominations and Governance Committee for a recommendation to be made to the Board.
 - (iii) resolve to defer making any appointment until further advertising or inquiries have been undertaken; or
 - (iv) make no appointment.
 - (d) A member of Sydney Gay and Lesbian Mardi Gras may, upon request to the Secretary, obtain the names of those members of Sydney Gay and Lesbian Mardi Gras who submitted expressions of interest in filling a vacancy on the Board.

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7.11 A director of Mardi Gras Arts ceases to be a director if the director:

- (a) ceases to be a member of Sydney Gay and Lesbian Mardi Gras;
- (b) holds any office of profit under Mardi Gras Arts or any related entity such as being appointed a member of staff;
- (c) is absent without permission of the Board of Mardi Gras Arts from more than 3 consecutive meetings of directors;
- (d) ceases to be (or to be eligible to be) a director by reason of the Corporations Act or an action taken under the Corporations Act;
- (e) becomes of unsound mind, or becomes a person whose person or estate is liable to be dealt with in any way under any statutory provision relating to mental health; or
- (f) has voted on a matter in which the director has a material personal interest contrary to Chapter X (and the Corporations Act) without having first disclosed that interest, and the other directors of Mardi Gras Arts, being satisfied of that failure, resolve that the director cease to be a director.

[Notation: The Corporations Act describes what a director must do if they have a material personal interest. See section 180, sections 190-196 of the Corporations Act. The Act does not define a material personal interest.]

CHAPTER VIII

DIRECTORS: POWERS & DUTIES

- 8.1 Subject to the Corporations Act and to this Constitution, the business of Mardi Gras Arts will be managed by the Board.
- 8.2 Without limiting the generality of the immediately preceding article, the Board may exercise all the powers of Mardi Gras Arts, that are not required by the Corporations Act or by this Constitution to be exercised by Mardi Gras Arts in general meeting, which include, without limitation, the power to:
- (a) borrow money; and
 - (b) mortgage or charge any property, for any debt, liability or obligation of Mardi Gras Arts.
- 8.3 Any:
- (a) cheque or other negotiable or similar instrument; or
 - (b) receipt for money paid to Mardi Gras Arts must be signed or executed in the manner determined by the Board (but in the absence of any determination, by 2 directors).
- 8.4 The Board must cause minutes to be made of:
- (a) appointments of officers and employees;
 - (b) the names of directors (or other persons) present at meetings of the Board; and
 - (c) all proceedings of the Board and of general meetings.
- 8.5 Minutes made under the immediately preceding article must be signed by the Chair of: (a) the meeting concerned; or
- (b) the next -following such meeting.
- 8.6 No resolution of Mardi Gras Arts in general meeting will of itself invalidate any prior act of the Board.

CHAPTER IX

DIRECTORS: PROCEEDINGS

- 9.1 At the first Board meeting held after an election of directors of Mardi Gras Arts at an annual general meeting of Sydney Gay and Lesbian Mardi Gras the Secretary of Mardi Gras Arts will Chair that meeting and (in addition to any other business) the Board shall at that meeting:
- (a) Determine whether the Board shall have office bearers and if so, the name, style and responsibilities of office bearers. Without limiting the generality of the forgoing the Board may

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determine to appoint one or more of their number to be President, Co Chair, Vice President, Treasurer, Spokesperson or any other title, office or position as the Board thinks fit (and may not appoint any of these officers).

- (b) Appoint such office bearers as may be determined by the Board,
- (c) Determine which member or members of the Board shall have specific responsibility for the financial administration of the Company;
- (d) Determine whether:-
 - (i) one member of the Board shall chair all meetings of the Board; or
 - (ii) the chairing of Board meetings shall rotate among members of the Board;
- (e) Determine whether, in the event of an equality of votes on any question before the Board: (i) the Chair shall have a casting vote; or
 - (ii) the question shall be decided in the negative.

- 9.2 The Board must meet at least 12 times between each Annual General Meeting.
- 9.3 Any director may at any time require the Secretary to call a meeting of the Board within a specified time (reasonable in the circumstances of the request), and the Secretary must do so.
- 9.4 A question arising at any meeting of the directors will be decided (subject to this Constitution) by a majority of votes of directors present and voting. Any such decision is for all purposes deemed a decision of the Board.
- 9.5 Subject to the provisions of the Corporations Act a director must not vote or be present at any meeting of the Board while that meeting is considering any:
 - (a) contract; or
 - (b) proposed contract, or
 - (c) any other matter;in respect to which the director has a material personal interest and if the Director does so vote that Director's vote will not be counted.

[Notation: The Corporations Act prescribes the circumstances where a director cannot attend a Board meeting or vote on any matter in which the director has a material personal interest. The Corporations Act also proscribes the situations in which a director may be relieved from this requirement. See section 195 of the Corporations Act.]

- 9.6 A director may be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or otherwise in connection with the business of the company.
- 9.7 The quorum necessary for the transaction of the business of the Board is:
 - (a) one-half of the number of directors (rounded up to the next whole number where the calculation of half does not yield a whole number) determined by the general meeting of members in accordance with Chapter VII; or
 - (b) a greater number fixed by the Board.
- 9.8 Where:
 - (a) the number of directors is less than the minimum number of directors fixed by Chapter VII; and
 - (b) the Board has attempted to fill vacancies pursuant to the procedure set out in Chapter VII; and
 - (c) the number of Board members is not less than 4 the Board may continue in office notwithstanding any other provision of this Constitution and the quorum shall be one half of the number of directors then in office (rounded up to the next whole number).

[Notation: The number of directors may be less than the minimum number of directors fixed at a general meeting. For example insufficient candidates may nominate for election to the Board. A Board may continue in office with a minimum of 4 directors provided that the Board has attempted to fill vacant positions in accordance with the provisions of this Constitution.]

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- 9.9 If there are an insufficient number of directors to constitute a quorum in accordance with this chapter then the remaining directors may act only to appoint further directors so that there are enough directors to constitute a quorum.
- 9.10 A resolution in writing signed by all the directors present in Australia at the time of the resolution will be valid as if it had been passed at a meeting of Directors, and may consist of several documents in similar form, each signed by 1 or more Directors.
- 9.11 Without limiting the manner in which directors may meet, a meeting of directors shall for the purposes of this Constitution include the directors meeting with each other by any technological means by which they are able to participate in the discussion notwithstanding the director (or one or more of them) are not physically present in the same place and a director so participating in such a meeting is deemed to be present (including for the purposes of constituting a quorum) and entitled to vote at the meeting.
- 9.12 The directors may at any time move of motion of reportable censure against a director. For any such motion:
- (a) Notice of the motion must be given at least 48 hours prior to the meeting that the motion is to be put;
 - (b) The motion can only be passed by a simple majority vote of those directors present;
 - (c) A vote in favour of the motion must be reported in the following annual report of directors at the following annual general meeting;

CHAPTER X

SECRETARY

- 10.1 The Board of Mardi Gras Arts shall appoint a person to act as the Company's Secretary:
- (a) for the purposes of the Corporations Act; and
 - (b) to carry out the responsibilities ascribed to the Secretary in this Constitution.
- 10.2 The person appointed in accordance with this Chapter:
- (a) shall not be a director of Mardi Gras Arts; and
 - (b) may be paid such remuneration as the Board may from time to time determine.
- 10.3 A person appointed as Secretary shall cease to be Secretary:
- (a) if that person resigns from the position of Secretary by giving notice to the Board in writing;
 - (b) dies;
 - (c) where the Board resolves to terminate the appointment.

CHAPTER XI

DELEGATION OF BOARD'S POWERS

- 11.1 The Board may delegate any of its:
- (a) powers; or
 - (b) functions to:
 - (c) a Committee of directors,
 - (d) a director or directors;
 - (e) an employee or officer of the Company; or
 - (f) any other person or persons (whether acting individually or as a constituted group), but no delegation:
 - (g) will be valid if it tries to delegate any duty specifically imposed on the directors by the Corporations Act or the general law; or
 - (h) is exclusive of the powers or functions of the Board.

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- 11.2 Any delegation by the Board of its powers or functions must be recorded in the minutes of the Board.
- 11.3 The Board may, in relation to the delegation of its powers and authorities, impose whatever restrictions, limitations and conditions it thinks fit in respect to that delegation. Without limiting the generality of the forgoing the Board may:
- (a) stipulate the conduct and procedure by which any constituted group may operate;
 - (b) determine how or when the constituted group is to report to the Board; and
 - (c) how any constituted group is to proceed with its business including how members of that constituted group shall be chosen.
- 11.4 Each delegate must in the exercise of any powers or functions delegated to a delegate or delegates by the Board conform to any directions or limitations (whether general or particular) imposed on them by the Board and the powers of the Board in respect to that delegate shall be and remain paramount.

CHAPTER XII

CERTAIN ACTS VALID

- 12.1 Each act done by:
- (a) the Board of Mardi Gras Arts; or
 - (b) any person exercising delegated authority; or
 - (c) any constituted group exercising delegated authority, will:
 - (d) if it is afterwards discovered that there was some defect in the appointment of a director or member of a constituted group; or
 - (e) if it is afterwards discovered that there was want of authority, be valid as if there were no such defect.

CHAPTER XIII

COMMON SEAL

- 13.1 The Common Seal of Mardi Gras Arts:
- (a) may only be used by authority of the Board; and
 - (b) must be kept in safe custody by the Board.
- 13.2 If the Common Seal is affixed to a document, that document must be signed by:
- (a) any Director and the Secretary; or
 - (b) any two Directors.

CHAPTER XIV

ACCOUNTS

- 14.1 The Board of Mardi Gras Arts must:
- (a) cause correct and proper accounting and other records to be kept; and
 - (b) do the following in relation to financial statements and group financial statements, as required:
 - (i) prepare them or cause them to be prepared;
 - (ii) make all financial information available for inclusion in any group financial statements;
 - (iii) distribute them after the end of the financial year but before the next following Annual General Meeting of Sydney Gay and Lesbian Mardi Gras Limited;
 - (iv) lay before an Annual General Meeting or a general meeting of Sydney Gay and Lesbian Mardi Gras Limited at least once in each calander year in accordance with

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- the Corporations Act; and
- (v) report on the activities of any group constituted by the Board.

14.2 "Financial statements" means:

- (a) a balance sheet;
- (b) a profit and loss account;
- (c) an auditor's report;
- (d) any other such document required by the Corporations Act; and
- (e) any further documents as the Board, taking into account the past practice of Mardi Gras Arts and Sydney Gay and Lesbian Mardi Gras, thinks fit.

CHAPTER XV

AUDIT

15.1 Mardi Gras Arts must appoint a registered company auditor in accordance with the Corporations Act.

15.2 Mardi Gras Arts shall appoint the same auditor as its holding company.

15.3 The auditor's remuneration and duties will be as required by the Corporations Act.

[Notation: Mardi Gras Arts as a public company is required by the Corporations Act to have an auditor]

CHAPTER XVI

NOTICE

16.1 A notice may be given by Mardi Gras Arts to any member of Mardi Gras Arts or member of Sydney Gay and Lesbian Mardi Gras Limited or other person under this Constitution:

- (a) personally; or
- (b) by sending it by pre-paid post, to:
 - (i) in the case of a member - the address then current for that member on the Register; or
 - (ii) in any other case - the address given by the person concerned for the purpose concerned; or
- (c) by sending it to an electronic mail address via the Internet, where the member has nominated that address as the mode for service and provided that the subject matter of the notice can be reasonably forwarded in digital or electronic form.

16.2 If a notice is sent by:

- (a) post, it will be deemed to have been received on the day after the day it is posted;
- (b) by e-mail, it will be deemed to be received on the day after it has been transmitted.

CHAPTER XVII

INDEMNITY

17.1 Subject to the Corporations Act every:

- (a) director;
- (b) auditor;
- (c) Secretary;
- (d) person acting under delegated authority of the Board; and
- (e) other officer for the time being of Mardi Gras Arts is, by this Constitution, indemnified out of the assets of Mardi Gras Arts against:
 - (f) any liability arising out of the exercise of delegated authority or the execution of the duties as an office bearer; or
 - (g) which is incurred by that person in defending any proceedings (whether civil or criminal), in

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which:

- (h) judgement is given in that person's favour; or
- (i) that person is acquitted; or
- (j) relief is granted to that person by the Court, in respect of any negligence, default, breach of duty or breach of trust.

17.2 Nothing in this Chapter is intended to limit the power of the Board to indemnify any person or organisation in other circumstances not referred to in this Chapter provided that indemnity is permitted by the Corporations Act.

CHAPTER XVIII

PUBLIC COMPANY LIMITED BY GUARANTEE

18.1 Every member of the Company undertakes to contribute to the property of the Company in the event of the Company being wound up while a person is a member, or within one (1) year after that person ceases to be a member, for payment of the debts and liabilities of the Company contracted before that person ceases to be a member, and of the costs, charges, and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one dollar (\$1.00).

CHAPTER XIX

WINDING UP

Division I

WIND UP OF PUBLIC FUND

19.1 If upon the winding-up or dissolution of the public fund listed on the Register of Cultural Organisations, 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 members, but shall be given or transferred to some other fund, authority or institution having objects similar to the objects of this public fund, and whose rules shall prohibit the distribution of its or their income among its or their members, such fund, authority or institution to be eligible for tax deductibility of donations under Subdivision 30-B, section 30-100, of the Income Tax Assessment Act 1997 and listed on the Register of Cultural Organisations maintained under the Act.

Division II

GENERAL WIND UP CLAUSE

19.2 If upon the winding-up or dissolution of the Company, 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 members, but shall be given or transferred to some other fund, authority or institution having objects similar to the objects of the Company, and whose rules shall prohibit the distribution of its or their income among its or to their members, such fund, authority or institution to be eligible for tax deductibility of donations under Subdivision 30- B, section 30-100, of the Income Tax Assessment Act 1997 and listed on the Register of Cultural Organisations maintained under the Act, or alternately where any public fund so eligible and established under this Company has been properly wound up shall be given or transferred to some other institutions or institutions with objects similar or complementary to the objects of the Company, and whose rules shall prohibit the distribution of its or their income among its or their members, such fund, authority or institution being either eligible for tax deductibility of donations under Subdivision 30-A Section 30-15 of the Income Tax Assessment act 1997 or properly tax exemption as a Community Service organisation under Subdivision 50-A, section 50-10 of the Income Tax Assessment Act 1997.

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SCHEDULE 1

[Form of Proxy]

Date

I appoint

Of

as my/our proxy for

the purposes of

meetings of Mardi

Gras Arts Limited ACN

158 800 018

(including adjournments of meetings).

(Note. The appointment cannot have effect for more than 1 meeting.)

1* This form authorises the proxy to vote on my behalf on all matters. OR

2* This form authorises the proxy to vote on my behalf on the following matters only:
[Specify the matters and any limitations on the manner in which you want the proxy to vote.]

Signature of Member

Signature of Proxy

SCHEDULE 2

Conduct of the ballot according to the principles of proportional representation

[See separate document]