

CORPORATIONS ACT

A company limited by guarantee and not having a share capital.

**CONSTITUTION OF SYDNEY GAY AND LESBIAN MARDI GRAS LIMITED**

**ACN 102 451 785**

**Adopted [●] 2023**

**CHAPTER I**

**INTERPRETATION & ALTERATION**

1.1 In this Constitution the following terms have the following meaning unless the context otherwise requires:

"ACNC Act" means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), and any other legislation relating to the establishment or operation of an Australian charities commission and/or a national regulatory framework and/or national education body or otherwise for the not-for-profit sector, and includes:

- (a) any regulations made under that Act or any other such legislation; and
- (b) any rulings or requirements of the Commissioner of the Australian Charities and Not-for-profits Commission under that Act, or any commissioner or body under any other such legislation, having application to the Company.

"Applicable Not-for-profit Law" means any law relating to the regulation of charities or not-for-profit entities applicable to the Company, including each of the Charitable Fundraising Act, the Charities Act, the Tax Act, section 150 of the Corporations Act and the ACNC Act.

"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.

"Board" means all or some of the Directors acting as the board of directors of the Company.

"Charitable Fundraising Act" means the *Charitable Fundraising Act 1991* (NSW) and any equivalent legislation in any State or Territory as may be applicable to the activities of the Company from time to time.

"Charities Act" means the *Charities Act 2013* (Cth).

"Company" or "Sydney Gay and Lesbian Mardi Gras" means Sydney Gay and Lesbian Mardi Gras Ltd ACN 102 451 785.

"Constitution" means the constitution of the Company as amended from time to time.

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

"cultural" means the set of shared attitudes, values, goals and practices, including artistic, that characterises a community or group of people.

"Director" means a person occupying the position of director of the Company.

"Imported Provisions" means the following provisions of the Corporations Act:

- (a) Section 139 (*Company must send copy of constitution to member*);
- (b) Sections 191 to 194 (*disclosure of, and voting on matters involving, material personal interests*);
- (c) Divisions 1 to 7 of Part 2G.2 (*meetings of members of companies*); and
- (d) Part 2G.3 (*minutes and members' access to minutes*).

"Mardi Gras Arts" means Mardi Gras Arts Ltd ACN 158 800 018.

"Member" means a member of the Company under Chapter IV, whose membership has not ceased.

"Objects" means the objects of the Company set out in clause 2.1.

"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.

"Register" means the register of Members of the Company.

"Registered Entity" means a body corporate registered under the ACNC Act.

"Secretary" means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of those joint secretaries. "Tax Act" means the *Income Tax Assessment Act 1997* (Cth) and includes any rulings or requirements of the Commissioner of Taxation of the Commonwealth of Australia having application to the Company.

1.2 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 or in the *Acts Interpretation Act 1901* (Cth) will have that meaning in this Constitution.
- (g) 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.
- (h) Another grammatical form of a defined word or expression has a corresponding meaning.
- (i) Headings and notations are for ease of reference only and do not affect interpretation.
- (j) A reference to time is a reference to New South Wales, Australia time.
- (k) A reference to A\$, \$A, dollar or \$ is to Australian currency.

*[Notation: For the purposes of determining gender and sexuality the Constitution adopts a self identification test.]*

1.3 Any reference in this Constitution to a provision of the Corporations Act, must be read, to the extent practicable, to that provision of the Corporations Act.

1.4 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.

1.5 If any document or thing is required by this Constitution to be lodged with the Secretary, the requirement may be satisfied only by:

- (a) posting the document to Sydney Gay and Lesbian Mardi Gras' postal address by pre-paid post; or
  - (b) delivering the document to Sydney Gay and Lesbian Mardi Gras' principal place of business during Sydney Gay and Lesbian Mardi Gras' ordinary business hours; or
  - (c) electronic notification to the Secretary,
- unless an additional method is prescribed in a particular case or cases.

1.6 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 members entitled to vote on the resolution. An ordinary resolution is a resolution passed by at least 50% of the votes cast by members entitled to vote]*

1.7 The provisions of this Constitution replace the current and any future replaceable rule or rules to the extent

permitted by the Corporations Act.

- 1.8 If, while the while the Company is a Registered Entity, the Corporations Act operates such that an Imported Provision does not apply to the Company because the Company is a Registered Entity:
- (a) a clause in the same terms as the Imported Provision, along with any relevant definitions in the Corporations Act, is deemed to be included in this Constitution and to apply to the Company to the extent the Imported Provision would have applied to the Company were the Company not a Registered Entity (**Equivalent Clause**); and
  - (b) a reference in this Constitution to an Imported Provision is deemed to be a reference to the Equivalent Clause.
- 1.9 For the purposes of this Constitution, if the provisions of the Corporations Act or the ACNC Act conflict with the terms of this Constitution on the same matter, the provisions of the relevant Act prevail to the extent of the conflict.

## CHAPTER II

### OBJECTS AND POWERS

- 2.1 The objects of Sydney Gay and Lesbian Mardi Gras shall be to organise and co-ordinate events of celebration, commemoration and lawful protest and engage in other activities as part of the gay, lesbian, transgender, bisexual, queer and intersex community. This includes:
- (a) Sustaining and strengthening the gay, lesbian, transgender, bisexual, queer and intersex community by:
    - (i) providing opportunities for interaction and association between individuals, groups and organisations;
    - (ii) contributing to its social, economic, cultural and political development;
    - (iii) enabling the full expression of its culture, history, traditions and aspirations; and
    - (iv) providing opportunities for other organisations to promote their services, fundraise and advance their objectives;
  - (b) Acknowledging the diversity of the gay, lesbian, transgender, bisexual, queer and intersex community.
  - (c) Advancing the goals of this community, including:
    - (i) full acceptance of and equal rights within Australia and internationally;
    - (ii) promoting visibility of its people within the Australian community and internationally;
    - (iii) recognition within society of the right to sexual self-determination of all people.
  - (d) Advancing the interests and general well-being of gay, lesbian, transgender, bisexual, queer and intersex people including:
    - (i) affirmation of gay, lesbian, transgender, bisexual, queer and intersex love and life;
    - (ii) creating opportunities for people to express themselves artistically and politically and develop their artistic and political skills; and
    - (iii) by creating a forum in which sexuality and gender diversity are explored and celebrated.
  - (e) Building strong, positive and beneficial relationships between the gay, lesbian, transgender, bisexual, queer and intersex community and the wider community.

The Objects for which the Company is established are also to do all things incidental or convenient in relation to the advancement of the Objects contained in this clause 2.1.

- 2.2 The assets and income of the Company shall be applied solely in furtherance of the Objects.
- 2.3 No part of the assets or income of the Company may be paid, transferred or distributed, directly or indirectly, by way of bonus, fee or otherwise, to any Member except for:
- (a) payment to a Member:
    - (i) of reasonable and genuine compensation in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
    - (ii) in good faith, of reasonable remuneration as an employee of the Company;
    - (iii) as principal repayments on money lent by the Member;
    - (iv) of interest on money lent by the Member at a rate not exceeding current bank overdraft rate of interest for moneys lent; or
    - (v) as reimbursement of reasonable expenses properly incurred by the Member on behalf of the Company; or

- (b) such other benefits as may from time-to-time be given in accordance with the Company's 'Ticketing & Reward Policy' in recognition of their contribution to the Company; or
  - (c) such other payments, distributions or transfers as may be permitted by the Applicable Not-for-profit Law.
- 2.4 The Company may only exercise the powers granted in section 124(1) of the Corporations Act to:
- (a) carry out the Objects; and
  - (b) do all things incidental or convenient in relation to the exercise of power under clause 2.4(a).
- 2.5 The Company will at all times comply with the Applicable Not-for-profit Law.

### **CHAPTER III**

#### **MEMBERSHIP**

- 3.1 The Members of Sydney Gay and Lesbian Mardi Gras are persons or organisations who apply for and are admitted to membership in accordance with this Constitution.
- 3.2 There shall be no age restriction on who may be a Member of Sydney Gay and Lesbian Mardi Gras.
- 3.3 The Board may resolve that there shall be Associate Members. In this event:
- (a) the Board shall also determine what rights and obligations Associate Members will have pursuant to this Constitution; and
  - (b) the rights of any other class of membership shall not diminish the rights of ordinary members who have been admitted to membership in accordance with this Constitution.
- 3.4 The Members in general meeting by ordinary resolution may resolve that a person be granted life membership in the Company. Upon the general meeting making such a resolution that person shall be entered on the Register as a life member and shall be entitled to exercise all the rights and privileges of membership but shall not be required to pay membership fees in accordance with this Constitution.
- 3.5 A Member that is an organisation can only be an Associate Member.
- 3.6 Any Member who is an Associate Member shall not have any right to participate in general meetings or to vote on any resolution or participate in any election for an officer of the Company.

### **CHAPTER IV**

#### **MEMBERSHIP OF SYDNEY GAY AND LESBIAN MARDI GRAS: ADMISSION, FEES AND OTHER MATTERS**

##### **Division 1**

- 4.1 The following procedure shall be followed in respect of the admission of any person or organisation (in this Chapter referred to as the "Applicant") to membership of Sydney Gay & Lesbian Mardi Gras, 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; and
  - (b) the Applicant must agree to support the aims and the Objects of Sydney Gay and Lesbian Mardi Gras as set out in this Constitution and be bound by this Constitution. It shall be sufficient compliance for the purposes of this clause if the Applicant signs, by electronic or other means, a statement, or provides some other indication to acknowledge their support of the Objects and their agreement to be bound by the Constitution, in such manner as the Board may from time to time determine.
- 4.2 Subject to clauses 4.3(c) and 4.6 below, each Application for membership shall be placed before the Board (or its delegate(s)) as soon possible and be determined by the Board (or its delegate(s)) in accordance with the immediately succeeding clause within 45 days.
- 4.3 The Board (or its delegate(s)) may in respect to the Application for membership:
- (a) accept the Application; or

- (b) reject the Application; or
  - (c) refer the Application to the Applicant for further explanation or clarification. If the Board (or its delegate(s)) asks for more information under this clause 4.3(c), their determination of the Application is to be deferred until the evidence is given.
- 4.4 In the event the Board (or its delegate(s)) rejects the Application for membership or, subject to clause 4.3(c), fails to accept the Application within 45 days of the Application being placed before the Board (or its delegate(s)), the Application shall be deemed to have been rejected.
- 4.5 No Application may be considered by the Board (or its delegate(s)):
- (a) from any date on which the Board itself has requisitioned or has been notified that Members or Directors have requisitioned a general meeting; or
  - (b) within 14 days prior to the date fixed for the convening of an Annual General Meeting, until after the conclusion of that general meeting.
- [Notation: New membership is suspended whenever general meetings of the Members are to be convened.]*
- 4.6 During the period or periods referred to in the immediately preceding clause the 45 days by which the Board (or its delegate(s)) must make a determination about an Application for membership under clause 4.2 shall be suspended and those periods shall not be counted as part of the 45 day period.
- 4.7 The Applicant will become a Member of Sydney Gay and Lesbian Mardi Gras upon the Applicant's name being entered in the Register.
- 4.8 Upon the rejection of an Application the Board (or its delegate(s)) must as soon as is possible:
- (a) cause the Applicant to be notified in writing, advising of the decision to reject the Application; and
  - (b) inform the Applicant of the right of appeal under Chapter XIX.
- 4.9 The Board (or its delegate(s)) is not required to give reasons to the Applicant for the decision to reject the Application.
- 4.10 The Board may from time to time fix any fee to be paid by Applicants for membership ("the Entrance Fee").
- 4.11 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.
- 4.12 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**

- 4.13 Subject to clause 3.4, membership is for 12 months commencing on the date (or annual anniversary of the date) on which the person was admitted to membership.
- 4.14 At a reasonable time before the expiry of a Members' membership under clause 4.13, Sydney Gay and Lesbian Mardi Gras 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.
- 4.15 A Member may renew their membership by paying the annual membership fee prescribed in the Renewal Form in cleared funds or as otherwise specified in the form.
- 4.16 A person immediately ceases to be a Member of Sydney Gay and Lesbian Mardi Gras if:
- (a) the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary, or on a later date specified in the notice;
  - (b) that person has not effected membership renewal within 12 months of becoming a Member or renewing their membership;
  - (c) that person is expelled from membership in accordance with Chapter XIX of this Constitution; or

- (d) the Member is a natural person and dies.

*[Notation: Where a person ceases to be a member that person cannot be a director or exercise voting rights at general meetings.]*

- 4.17 The Secretary must record a cessation of membership in the Register.

## **CHAPTER V**

### **THE REGISTER**

- 5.1 The Secretary must establish and maintain the Register as required by law.
- 5.2 The Register must contain the following information about each Member:
  - (a) the Member's name and address; and
  - (b) the date on which the entry of the Member's name in the Register was made.
- 5.3 Where an organisation is a Member:
  - (a) an officer of the organisation shall be registered as the Member;
  - (b) the Register must contain:
    - (i) the organisation's name and address; and
    - (ii) the name and address of the officer of the organisation.
- 5.4 The Register may, if the Board so decides, record particulars of former members separately from the rest of the Register.
- 5.5 The Register must be kept at Sydney Gay and Lesbian Mardi Gras' principal place of business.
- 5.6 The Secretary must ensure that only those particulars required by the Corporations Act to be contained in the Register are:
  - (a) available for inspection in accordance with the Corporations Act; and
  - (b) given only to a person with the right to have such information in accordance with the Corporations Act.Nothing in this clause prevents the Board providing particulars of an individual Member's name and address where the individual Member has so consented and the Board has complied with any law relevant to the collection and keeping of confidential information.
- 5.7 A Member may at any time by notice in writing lodged with the Secretary inform the Company of any change in the Member's name or address. The Company may require reasonable verification of the change.

## **CHAPTER VI**

### **GENERAL MEETINGS**

#### **Division 1**

- 6.1 Sydney Gay and Lesbian Mardi Gras must hold general meetings in accordance with the Corporations Act.
- 6.2 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.
- 6.3 A general meeting may be held:
  - (a) at one or more physical venues; or
  - (b) at one or more physical venues and using virtual meeting technology (if any); or
  - (c) as a virtual meeting using virtual meeting technology only.
- 6.4 A general meeting will be held:
  - (a) on such date, at such time and, if applicable, such place; and
  - (b) using such virtual meeting technology (if any),

as may be determined by the Directors.

- 6.5 A general meeting must be convened by the Directors where:
- (a) Members representing at least 5% of the votes that may be cast at a general meeting so request; or
  - (b) at least 2 Directors so request; or
  - (c) the Board so requests; or
  - (d) 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 Sydney Gay and Lesbian Mardi Gras;
    - (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.
- 6.6 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 making the request; and
  - (d) be given to the Secretary.
- 6.7 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.
- 6.8 The Directors must call a general meeting that has been requisitioned pursuant to clauses 6.5(a) and 6.6 within 21 days after the request is given to the Company. The meeting must be held not later than 2 months after the request is given to the Company.
- 6.9 Notice of general meeting must be given:
- (a) not less than 21 days before the general meeting concerned; and
  - (b) in writing to:
    - (i) each Member entitled to vote at the meeting; and
    - (ii) the Company's auditor at the time of the notice.
- 6.10 In addition to the mode of notice described in the immediately preceding clause, the Secretary shall, not less than 21 days before the general meeting cause:
- (a) a notice to be placed on any website conducted by Sydney Gay and Lesbian Mardi Gras such that the notice is accessible from the website's home page; and
  - (b) a notice, to be published in the form of a newsletter to Sydney Gay and Lesbian Mardi Gras' complete electronic database and social media channels, that enters circulation not later than 21 days before the general meeting concerned.
- 6.11 The notice of the general meeting must in each case specify:
- (a) the date and time and, if applicable, place of the meeting (and, if the meeting is to be held using virtual meeting technology, sufficient information to allow the Members to participate in the meeting by means of the technology);
  - (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 (other than an Annual 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;
  - (f) if there are any resolutions to be put, a form of proxy (which need not be published in the Sydney Star Observer or other publication); and
  - (g) if it is an Annual General Meeting and there is an election of Directors, the provisions for voting in accordance with clause 7.12(l).

## Division II

- 6.12 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.
- 6.13 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:
- (a) lodge a Notice of Business so that the matters specified in the Notice of Business can be dealt with at that Annual General Meeting; and
  - (b) nominate as candidates for the election of Directors to be conducted at that Annual General Meeting.
- 6.14 The notice referred to in the immediately preceding clause need not be given in writing to each Member but must be advertised by:
- (a) a notice to be placed on any website conducted by Sydney Gay and Lesbian Mardi Gras such that the notice is accessible from the website's home page; and
  - (b) a notice, to be published in the form of a newsletter to Sydney Gay and Lesbian Mardi Gras' complete electronic database and social media channels, that enters circulation no later than 42 days before the Annual General Meeting concerned.
- 6.15 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.
- 6.16 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 and a seconder.
- 6.17 If a Notice of Business includes any resolutions, and no proposer and seconder of the resolution are nominated, the 2 Members (taken in the order in which their 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.
- 6.18 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 may be enclosed with the notice calling the general meeting or circulated with other correspondence which the Company may 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 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 may be enclosed with the notice calling the general meeting or circulated with other correspondence which the Company may 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.



- 6.19 Without limiting the powers conferred on the Chair of a general meeting under clause 7.6, the Board may change a venue or venues or, postpone or cancel any general meeting (other than a meeting convened as the result of a Member's requisition under clause 6.5(a) but including any meeting adjourned or postponed under clause 7.6) at any time prior to the day of the meeting.
- 6.20 The Board must give notice of the change of venue or venues, postponement or cancellation to the persons referred to in clause 6.9(b).

### **Division III**

- 6.21 The business that may be transacted at an Annual 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) the election of Directors;
  - (e) if required, the appointment of auditors and the fixing of their remuneration; and
  - (f) all items of business submitted by the Board or the Members in accordance with this Chapter.
- 6.22 No business may be transacted at a general meeting unless the general nature of the business is stated in the notice convening the meeting.
- 6.23 No person may move any amendment to a resolution proposed at a general meeting the terms of which are set out in the notice convening the meeting, or to a document which relates to such a resolution (and a copy of which has been sent to Members or made available for them to inspect or obtain), without the approval of the Chair of the meeting (in their discretion).

## **CHAPTER VII PROCEEDINGS AND CONDUCT AT GENERAL MEETINGS**

### **Division I**

- 7.1 No business may be transacted at a general meeting unless a quorum is present when the meeting proceeds to business. A quorum is the lesser of:
- (a) 10% of the number of Members eligible to vote at the meeting; or
  - (b) 50 such Members,
- present in person, by proxy or, if applicable, participating using virtual meeting technology.
- 7.2 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 the Members present.
- 7.3 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 3 Members eligible to vote at the meeting.

### **Division II**

- 7.4 At the commencement of each general meeting a Member nominated by the Board shall take the Chair.
- 7.5 No Member who is the proposer or seconder of any resolution that is to be put at the general meeting and no Director (or Member standing for election at that general meeting) may be appointed Chair of the meeting.
- 7.6 The Chair:
- (a) may, with the consent of the meeting; and
  - (b) must, if so directed by the meeting,
- adjourn any general meeting, but:

- (c) not for more than 30 days;
- (d) no business may be transacted at the meeting as adjourned other than business left unfinished at the time of the adjournment; and
- (e) no notice of the adjournment need be given.

### Division III

- 7.7 Subject to the Corporations Act:
- (a) on a show of hands and on a poll or ballot every Member has one vote; and
  - (b) a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 7.8 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) a poll is demanded in accordance with the Corporations Act; or
  - (b) the meeting is held using virtual meeting technology, in which case a resolution is to be determined by a poll.
- 7.9 If no poll is demanded:
- (a) any declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously or by a specified majority, or lost; and
  - (b) an entry to that effect in the book containing the minutes of the proceedings of the Company, are conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 7.10 The following applies to any poll:
- (a) The demand for it may be withdrawn.
  - (b) It will be taken when and in the manner that the Chair directs.
  - (c) The result of the poll will be the resolution of the meeting at which the poll was demanded.
  - (d) The Chair may determine any dispute about the admission or rejection of a vote.
  - (e) The Chair's determination, if made in good faith, will be final and conclusive.
  - (f) If the poll relates to a resolution for the adjournment of the meeting, it must be taken immediately.
- 7.11 A Member may vote in person, by proxy, by post or, if applicable, using virtual meeting technology. 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.
- 7.12 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 will be valid if it is signed by the Member making the appointment and contains the information required by section 250A(1) of the Corporations Act. The Board may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
  - (e) Unless otherwise instructed on the form of appointment, the proxy holder may vote as the proxy holder wishes.
  - (f) Unless otherwise provided for in the proxy's appointment, the appointment of the proxy will be taken to confer authority:
    - (i) to vote on:
      - A. any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
      - B. any procedural motion, including any motion to vacate the chair or to adjourn the general meeting, even though the appointment may specify the way the proxy is to vote on a particular resolution; and
    - (ii) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
  - (g) Unless Sydney Gay and Lesbian Mardi Gras has received notice in writing to the contrary prior to the meeting concerned, a vote by a proxy holder is valid even if, before the proxy votes, the appointing

Member:

- (i) dies or is mentally incapacitated; or
  - (ii) withdraws the proxy's appointment.
- (h) The appointment of a proxy must be received by the Company at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) prior to:
- (i) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
  - (ii) the taking of a poll on which the appointee proposes to vote.
- (i) The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
- (i) the Company's registered office; or
  - (ii) a place or electronic address specified for that purpose in the notice of meeting.

- 7.13 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 of that resolution by Members in person, by proxy and, if applicable, using virtual meeting technology. 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

- 7.14 The business to be transacted at each Annual General Meeting includes the election of Directors . The following provisions shall apply in relation to Director elections:
- (a) The Secretary will appoint a Returning Officer not later than 30 days before the Annual General Meeting.
  - (b) Any 2 Members (the "Nominators") may nominate another Member (the "Candidate") for election.
  - (c) A nomination must be in writing signed by:
    - (i) the Candidate; and
    - (ii) the Nominators,and must be deposited at Sydney Gay and Lesbian Mardi Gras' principal place of business no later than the close of business (05:00 pm) 28 days before the Annual General Meeting (calculated by reference to the date appointed for that Annual General Meeting) at which the election will occur.
  - (d) The Returning Officer and Secretary must meet after the closure of nominations.
  - (e) Notwithstanding any other provision of this Constitution, that meeting will be:
    - (i) chaired by the Returning Officer;
    - (ii) solely for the purpose of determining the order of Candidates to appear on the ballot paper; and
    - (iii) open to be attended by any Member.
  - (f) If, at the closure of nominations, the number of Candidates is equal to or less than the number of vacancies, the Returning Officer shall declare those Candidates elected with effect from the relevant Annual General Meeting, and the remaining clauses of this Division will not apply. The Board may appoint, in accordance with clause 8.10, any Member to fill any remaining vacancies on the Board.
  - (g) If, at the closure of nominations, the number of Candidates exceed the number of vacancies, the following paragraphs will apply.
  - (h) The Returning Officer must, at the meeting referred to in clause 7.14(d), cause the order for the ballot paper to be determined by lot. As soon as is practicable after the order is determined, the Secretary must cause a notice to be posted on any website conducted by Sydney Gay and Lesbian Mardi Gras such that the notice is accessible from the website's home page of the Candidates (and their Nominators) in the order that will appear on the ballot.
  - (i) Any Candidate for a position on the Board shall be invited to submit written material, not exceeding two hundred (200) words, in support of that Candidate's nomination, which may be distributed to Members (either as part of the notice of Annual General Meeting or separately). Any such written material must be received by the Company within the timeframe specified in clause 7.14(c). The Secretary may exercise an absolute discretion as to how the written material will be presented. The Secretary's decision on any aspect relating to the reproduction and circulation of this material shall be final and binding.
  - (j) Any Candidate may approach the Secretary for access to the Register for the purpose of providing additional material to such members at the Candidate's own expense.
  - (k) The Returning Officer is required to make provision for the election of Directors. This may include but is

not limited to providing a pre-poll facility at Sydney Gay and Lesbian Mardi Gras' principal place of business, by providing electronic voting facilities and by providing postal ballots on request. All ballot papers including pre-poll and electronic votes will be required to be returned and received by the Returning Officer no later than the close of business (5:00pm) four business days prior to the appointed date for the annual general meeting. Pre-poll voting must close no later than the close of business (5:00pm) four business days prior to the appointed date for the annual general meeting. The Returning Officer will ensure that whilst the vote of each Member who casts a ballot by post or casts a pre-poll vote, remains secret, the name of the Member is to be recorded in a register maintained by the Returning Officer.

- (l) No Member who has cast their ballot by post shall if they attend the general meeting in person or by proxy be entitled to cast another vote in the election of the Board. The Returning Officer shall be responsible for the issuance of the ballot papers to Members at the time of the general meeting and shall ensure by reference to the postal ballot register that no Member who has cast a postal vote is issued with a ballot paper at the general meeting.
- (m) At the general meeting at which the election will occur every Member (with the exception of those Members who have cast a postal vote) present in person or by proxy or, if applicable, participating using virtual meeting technology may:
  - (i) vote; or
  - (ii) abstain from voting.
- (n) Voting on Director elections shall be by secret ballot.
- (o) The ballot and the counting of votes shall be conducted according to the principles of proportional representation as set out in Schedule 1 of this Constitution.
- (p) Each Candidate may appoint 1 scrutineer for the counting of votes.
- (q) After the count of votes is completed, the Returning Officer must declare which of the Candidates have been elected, and must publish:
  - (i) the total number of votes cast by each applicable method of voting (including, to the extent applicable, votes cast by Members in person, using virtual meeting technology, by post or by proxy);
  - (ii) the total number of valid votes cast; and
  - (iii) the records required by Schedule 1 to be published.Nothing in this clause is intended to prevent the Returning Officer declaring the total number of postal or proxy votes received at an earlier time in the general meeting (if any).
- (r) The Secretary must, upon request by a Member, send to that Member a copy of the information published in accordance with clause 7.14(q). The Secretary may charge the Member a fee to cover the reasonable cost of providing the Member with the information.

## **CHAPTER VIII**

### **DIRECTORS AND OFFICE-HOLDERS**

- 8.1 Only persons who are Members may be appointed Directors.
- 8.2 The Directors are those persons elected or appointed as Directors in accordance with the provisions of this Constitution.
- 8.3 Subject to this Constitution, the members of the Board in office on the date of adoption of this Constitution, continue in office from that date.
- 8.4 The number of Directors will be determined as follows:
  - (a) The Members by ordinary resolution in general meeting may vary the number of Directors provided that the number shall not be less than 8 and not more than 16.
  - (b) Any resolution that may be carried at a general meeting pursuant to the immediately preceding clause will only take effect at the next general meeting at which the election of the Board is undertaken.
- 8.5 A Director shall cease to hold office at the conclusion of the second Annual General Meeting after the Director was last elected. A Director who ceases to hold office under this clause 8.5 may stand for re-election to the Board.

8.6 The commitment from Directors is for a two (2) year term but not withstanding anything in the Constitution a Director may resign from the Board at any time and not seek re-election.

8.7 The Members may by ordinary resolution at a general meeting:

- (a) remove any Director from office; and
- (b) appoint another Member to serve the balance of the term of the removed Director.

*[Notation: The Corporations Act proscribes 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.]*

8.8 Where a resolution is put to a meeting for the removal of a Director the following provisions shall apply:

- (a) 20 minutes is deemed a sufficient period of time in which the Director may put their case to the Members in general meeting;
- (b) 10 minutes is deemed to be a sufficient period of time in which the proposer and/or seconder of the resolution for the removal of the Director may put their reply;
- (c) immediately following the case being put in reply, the Chair of the meeting shall be entitled to put the resolution to vote by the Members in general meeting;
- (d) in the event that the resolution is carried, the Director ceases to be a Director of Sydney Gay and Lesbian Mardi Gras and if the Director has been appointed to a position in any working group or other Committee by reason of their being a Director, that position shall be terminated;
- (e) in the event that the resolution is passed by the Members in a general meeting (other than an Annual General Meeting) then at the next Annual General Meeting the report of the Directors to the Members may refer to the name of the former director and the date of their removal but no further details about their removal need be reported; and
- (f) nothing in this paragraph is intended to derogate from the provisions contained in section 203D of the Corporations Act or to in any way limit the right of any meeting of Members to control the conduct of their meeting.

*[Notation: As a general rule, members in general meeting are entitled to move from 'the floor' for further time to be given to any speaker to present their case.]*

8.9 Where Members in general meeting pass an ordinary resolution removing Directors from office and that resolution has (or will have) the effect of:

- (a) removing the entire Board from office;
- (b) reducing the number of the Directors to less than the prescribed number pursuant to the Corporations Act [currently 3] then the following provisions shall apply:
  - (i) the Secretary may appoint themselves and such other Members 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 VII 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.

8.10 The Directors may at any time appoint any Member to be a Director to fill a vacancy on the Board. Any Director so appointed holds office only until the Annual General Meeting at which the Director who created the vacancy would have ceased to be a Director, and is then eligible to seek re-election.

8.11 Where a vacancy on the Board is to be filled by the Board the following provisions apply:

- (a) The Secretary will invite Members to submit their expressions of interest to be appointed a Director by:
  - (i) placing a notice on any website conducted by Sydney Gay and Lesbian Mardi Gras such that the notice is accessible from the website's home page; and

- (ii) 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 shall place before the Board the names of all Members 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 may:
  - (i) fill a vacancy on the Board from among those Members who have submitted expressions of interest;
  - (ii) resolve to defer making any appointment until further advertising or inquiries have been undertaken; or
  - (iii) make no appointment.

8.12 A person immediately ceases to be a Director if they:

- (a) cease to be a Member of the Company;
- (b) hold any office of profit under Sydney Gay and Lesbian Mardi Gras such as being appointed a member of staff;
- (c) are absent without permission of the Board from more than 3 consecutive meetings of Directors;
- (d) cease 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) become of unsound mind, or become a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (f) are directly or indirectly interested in any contract or proposed contract with the Company and fail to declare the nature of the interest as required by the Corporations Act;

*[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.]*

- (g) have been removed from office by resolution of the Members in general meeting;
- (h) become ineligible to be a Director of the Company under the ACNC Act while the Company is a Registered Entity;
- (i) resign by notice in writing to the Company, from the date of receipt of that notice by the Secretary, or on a later date specified in the notice;
- (j) become bankrupt or make any general arrangement or composition with their creditors; or
- (k) die.

## **CHAPTER IX DIRECTORS: POWERS & DUTIES**

- 9.1 Subject to the Corporations Act and to this Constitution, the business of Sydney Gay and Lesbian Mardi Gras will be managed by the Board.
- 9.2 Without limiting the generality of the immediately preceding clause, the Board may exercise all the powers of Sydney Gay and Lesbian Mardi Gras that are not required by the Corporations Act or by this Constitution to be exercised by Sydney Gay and Lesbian Mardi Gras 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 Sydney Gay and Lesbian Mardi Gras.
- 9.3 Any:
  - (a) cheque or other negotiable or similar instrument; or
  - (b) receipt for money paid to Sydney Gay and Lesbian Mardi Gras,
 must be signed or executed in the manner determined by the Board (but in the absence of any determination, by 2 Directors).
- 9.4 In addition to their responsibilities at law, each Director is responsible and accountable for compliance by the Company with its Objects and must:
  - (a) exercise their powers and discharge their duties in compliance with the Corporations Act;
  - (b) comply with the Corporations Act in relation to the disclosure of the Director's interest; and

- (c) at all times while the Company is a Registered Entity, comply with the duties described in governance standard 5 of the regulations made under the ACNC Act.
- 9.5 The Board must cause minutes to be made of:
- (a) the names of Directors (or other persons) present at meetings of the Board;
  - (b) all proceedings and resolutions of the Board and of general meetings;
  - (c) all resolutions passed by the Board in accordance with clause 10.13; and
  - (d) all disclosures of interest under clause 10.8.
- 9.6 Minutes made under the immediately preceding clause must be signed by the Chair of:
- (a) the meeting concerned; or
  - (b) the next meeting.
- 9.7 No resolution of Sydney Gay and Lesbian Mardi Gras in general meeting will of itself invalidate any prior act of the Board.

## **CHAPTER X**

### **DIRECTORS: PROCEEDINGS**

- 10.1 At the first Board meeting held after an election of Directors at an annual general meeting the Secretary will be Chair of 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 foregoing the Board may 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.
- 10.2 The Board must meet at least 6 times between each Annual General Meeting.
- 10.3 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.
- 10.4 An accidental omission to give notice of a Board meeting to any Director or the non-receipt of such notice by any Director does not invalidate the proceedings at or any resolution passed at the meeting.
- 10.5 Subject to clause 10.9, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 10.6 Subject to this clause 10, the Directors may meet together, adjourn and regulate their meetings as they think fit.
- 10.7 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 and, subject to clauses 10.1(e) and 10.9, each Director has one vote. Any such decision is for all purposes deemed a decision of the Board.
- 10.8 As required by the Corporations Act, the Applicable Not-for-profit Law or this Constitution (as applicable), a Director must, as soon as practicable, give each of the other Directors notice of any actual or perceived, direct or indirect personal interest in a matter that relates to the affairs of the Company.
- 10.9 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 proscribes 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 prescribes the situations in which a director may be relieved from this requirement. See section 195 of the Corporations Act.]*

- 10.10 No payment will be made to any Director other than payment:
- (a) which is in reimbursement for reasonable out of pocket expenses (including travelling expenses in attending and returning from meetings of the Board or any Committee or general meetings of the Company) properly incurred by the Director in connection with the operation of the Company, in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Board and is substantiated or supported by appropriate documentation as determined by the Company; and
  - (b) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.
- 10.11 The quorum necessary for the transaction of the business of the Board is:
- (a) one-half of the total number of Directors (rounded up to the next whole number); or
  - (b) a greater number fixed by the Board.
- 10.12 If there is an insufficient number of Directors to constitute a quorum in accordance with this chapter then the remaining Directors may act only to:
- (a) appoint further Directors so that there are enough Directors to constitute a quorum; or
  - (b) call a general meeting.
- 10.13 A resolution in writing signed by all the Directors will be valid as if it had been passed at a meeting of Directors, and may consist of several documents in identical form, each signed by 1 or more Directors. The resolution is passed when the last Director signs. Any document referred to in his clause may be in the form of an electronic notification and a signature on a document referred to in this clause may be an electronic signature.
- 10.14 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.
- 10.15 The Directors may at any time move a 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.
- 10.16 The Directors may at any time move of motion of stand down 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 two-thirds majority vote of those Directors present;
  - (c) For the succeeding 28 days following a successful motion against a Director, the Director will be relinquished of any duties and responsibilities given to it by the Board;
  - (d) A vote in favour of the motion must be reported in the following annual report of Directors at the following Annual General Meeting.

## CHAPTER XI

### SECRETARY



- 11.1 The Board 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.
- 11.2 The person appointed in accordance with this Chapter:
- (a) shall not be a Director of Sydney Gay and Lesbian Mardi Gras; and
  - (b) may be paid such remuneration as the Board may from time to time determine.
- 11.3 A person appointed as Secretary shall cease to be Secretary if they:
- (a) resign from the position of Secretary by giving notice to the Board in writing;
  - (b) die; or
  - (c) are removed by resolution of the Board.

## CHAPTER XII

### DELEGATION OF BOARD'S POWERS

- 12.1 The Board may delegate any of its powers or functions to:
- (a) a committee (which may include persons other than Directors) (each a **Committee**);
  - (b) a Director or Directors;
  - (c) an employee or officer of the Company; or
  - (d) any other person or persons (whether acting individually or as a constituted group),
- but no delegation:
- (e) will be valid if it tries to delegate any powers which by law must be dealt with by the Directors as a Board; or
  - (f) is exclusive of the powers or functions of the Board.
- 12.2 Any delegation by the Board of its powers or functions must be recorded in the minutes of the Board.
- 12.3 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.
- 12.4 The Board may at any time revoke any delegation of power made pursuant to clause 12.1.
- 12.5 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.
- 12.6 A delegate may be authorised by the Board to sub-delegate all or any of the powers for the time being vested in them.
- 12.7 Meetings of any Committee will be governed by the provisions of this Constitution which deal with Board meetings so far as they are applicable and are not inconsistent with any directions of the Board. The provisions apply as if each Committee member was a Director.

## CHAPTER XIII

### CERTAIN ACTS VALID

- 13.1 Each act done by:
- (a) the Board; 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 XIV**

##### **ACCOUNTS**

- 15.1 The Board must cause the Company to keep written financial records in relation to the business of the Company as required by law.

#### **CHAPTER XV**

##### **AUDIT**

- 16.1 The Board must cause the financial records of the Company to be audited or reviewed as required by law.

*[Notation: Sydney Gay and Lesbian Mardi Gras as a large registered charity is required by the ACNC Act to have an auditor]*

#### **CHAPTER XVI**

##### **NOTICE**

- 17.1 Subject to the Corporations Act, a notice may be given by Sydney Gay and Lesbian Mardi Gras to any Member 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 by means of an electronic communication where the Member has nominated that address as the mode for service; or
  - (d) by sending sufficient information to the person in physical or electronic form to the person at the address shown in the Register, or the address or email address elected by the person to the Company for sending notices to the person, to allow the person to access the document electronically.
- 17.2 A notice or information sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
  - (b) on the day after the date it is posted.
- 17.3 A notice or information sent by electronic communication is taken to be served:
- (a) by properly addressing the electronic communication and transmitting it; and
  - (b) on the day after it has been transmitted.
- 17.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on the Company's website.

#### **CHAPTER XVII**

##### **INDEMNITY**

- 18.1 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 Sydney Gay and Lesbian Mardi Gras, is, by this Constitution, indemnified out of the assets of Sydney Gay and Lesbian Mardi Gras against any liability:
  - (f) 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 which:
    - (i) judgement is given in that person's favour; or
    - (ii) that person is acquitted; or
    - (iii) relief is granted to that person by the Court, in respect of any negligence, default, breach of duty or breach of trust.
- 18.2 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 EXPULSION FROM MEMBERSHIP**

- 19.1 If the Board is of the view that a Member of Sydney Gay and Lesbian Mardi Gras 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.
- 19.2 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 clause; 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.
- 19.3 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.
- 19.4 A resolution to expel a Member must be carried by at least two-thirds of the Directors then in office.
- 19.5 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.
- 19.6 Where the Board has determined to expel the Member, the Secretary must inform the Member of the right of Appeal under Chapter XX.

- 19.7 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.

## CHAPTER XIX

### RIGHT OF APPEAL

- 20.1 In this Chapter:
- (a) an Applicant whose Application for membership has been rejected under Chapter IV; or
  - (b) a Member whom the Board has determined to expel under Chapter XIX; is referred to as the "Appellant".
- 20.2 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 Chapter.
- 20.3 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 as a Member of Sydney Gay and Lesbian Mardi Gras.

- (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.

20.4 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;
- (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 XX**

### **MEMBERS' CONTRIBUTION**

21.1 Every Member of the Company undertakes to contribute to the property of the Company in the event of the same being wound up while they are a Member, or within one (1) year after ceasing to be a Member, for payment of the debts and liabilities of the Company contracted before they ceased 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 XXI**

### **WINDING UP**

22.1 On the winding up of the Company, any surplus remaining following the satisfaction of all debts and liabilities of the Company will not be paid to or distributed among the Members, but will, unless otherwise required by law, be given or transferred to Mardi Gras Arts or such other corporations or bodies (each a "Potential Recipient") provided that any such Potential Recipient is, by its constitution:

- (a) required to pursue charitable purposes only (being charitable purposes similar, as far as possible, to those of the Company);
- (b) required to apply its income in promoting its charitable purposes; and
- (c) prohibited from making any distribution to its Members and paying fees to its Directors, to at least the same extent of such prohibitions under this Constitution,

such Potential Recipient to be determined by the Members and, in default, by application to the Supreme Court of New South Wales for determination.

## **CHAPTER XXII**

### **MISCELLANEOUS**

A checklist is provided in Schedule 2 setting out the timelines by which various steps must be undertaken in accordance with this Constitution. The checklist is for guidance only and does not have effect as a provision of this Constitution.

**SCHEDULE 1**

**Conduct of the ballot according to the principles of proportional representation**

***[ Schedule to be inserted into Constitution ]***

**SCHEDULE 2**  
**Check List for General Meetings**

<b>Event or Notice</b>	<b>Clause in this Constitution</b>	<b>Time required prior to general meeting</b>
Date when notice must be given of last date for: (a) lodgment of Notices of Business; and (b) lodgment of nominations of candidates for the election of directors at Annual General Meeting.	6.13	42 days
Last date for lodgment of nominations of candidates for the election of directors.	7.14(c)	28 days (by 5pm)
Date of notice of general meeting	6.9	21 days
Last date Board may consider new applications for membership prior to Annual General Meeting	4.5(b)	15 days
Last date for lodgment of postal ballot papers	7.14(k)	4 business days (by 5pm)
Closure of pre-poll (including electronic) voting	7.14(k)	4 business days (by 5pm)
Last date for lodgment of proxies	7.12(h)	48 hours