

# Constitution

## Kangaroo Island Community Broadcasters Incorporated

ABN: 32 254 538 127

Incorporated Association: A21581



### 1. NAME

The name of the incorporated association is Kangaroo Island Community Broadcasters Incorporated, referred to in these rules as 'The Association'.

### 2. OBJECTS

- 2.1 The Association is a not-for-profit charitable community institution established for the principal purpose of advancing culture, radio and music by establishing, maintaining, operating and promoting a community radio station to provide broadcasting services for the direct benefit of the public including:
- a. negotiating, obtaining and maintaining broadcasting licences;
  - b. furnishing, equipping and maintaining studios, production facilities and transmission facilities;
  - c. encouraging and developing the uses of radio and media for education, public affairs, social and cultural commentary, information, community issues, and entertainment;
  - d. broadcasting programs focused on local issues, events, culture and activities relevant to the needs and interests of the local community;
  - e. conducting entertainment, promotions, cultural events, meetings, community information, or courses on matters of interest;
  - f. training, educating and providing services for the training of any persons involved in the preparation and broadcasting of content;
  - g. making available to the community the facilities to create and produce local content for broadcast;
  - h. promoting the work of Australian, and in particular South Australian musicians and performers;
  - i. encouraging the development and ideals of community broadcasting in such ways as the Association may determine, and in particular:
    - i) to abide by the Community Radio Codes of Practice.
    - ii) to provide programming of a type not adequately covered by pre-existing broadcasters, and in particular special programs directed to groups or sectors within the community.
    - iii) to inform members and other interested individuals about the aims and operations of the Association, about community broadcasting, and about the aims and activities of participating groups and individuals.
    - iv) to support and to co-operate with any kindred body.
    - v) to not affiliate with any political group/property or any religious group.
  - j. to operate and maintain a gift fund in accordance with the requirements of the Income Tax Assessment Act 1997 (Cth); and
    - i) such other purposes as are incidental or ancillary to this principal purpose.

- 2.2 The Association can only exercise the powers it has in the applicable Association's state law (if any) to:
- a. carry out the objects under **Item 2.1** and;
  - b. do all things incidental or convenient in relation to the exercise of power under **Item 2.2.a**

### 3. **POWERS**

- 3.1 The Association shall have all the powers conferred by **section 25** of The Associations Incorporated Act 1985, referred to in these rules as the Act.

### 4. **MEMBERSHIPS AND FEES**

- 4.1 Membership of the Association shall be open to any natural person upon submission to the Board of the completed form set out in the Policy determined by the Board and upon payment of the annual membership fee.
- 4.2 A person shall not become a member until their application is approved by the Board.
- 4.3 The Board may refuse an application of membership, according to the Policy determined by the Board and must provide a reason for that refusal.
- 4.4 The Secretary is responsible for adding the details of the newly approved member to the Register of Members.
- 4.5 A member shall have the right to one vote at any meeting of the Association on every issue that may arise.
- 4.6 A person whose application is rejected by the Board has the right to appeal that decision at the next meeting of the Association. If a simple majority of members present at that meeting support the appeal, then the person shall become a member.
- 4.7 The Board may expel any member according to the rule under **Item 14.1** determined by the Board and it must provide a reason for that expulsion.
- 4.8 Any member who is expelled from membership of the Association shall have the right to appeal that decision at the next meeting of the Association. If a simple majority of members present at that meeting support the appeal, then the decision to expel the member shall be revoked.
- 4.9 Annual membership fees shall become due on the first day of July and the Treasurer shall send written notice to all members. If a member does not pay the annual membership fee prior to the first day of August, they shall cease to be a member, and their name shall be removed from the register of members.
- 4.10 The Board may not refuse to accept the payment of a membership fee from an existing member.
- 4.11 A member may only resign from the Association by advising the Board in writing. At its next meeting, the Board will direct the Secretary to remove the name of that member from the register of members. Resignation by a member does not release them from any pre-existing obligations to the Association they had prior to their resignation.

## **5. THE BOARD**

- 5.1 The affairs of the Association shall be managed by the Board, which in addition to any powers and authorities conferred by these rules may exercise all such powers and do all such things as are within the objects of the Association, and are not by the Act or by these rules required to be done at a meeting of the Association.
- 5.2 The Board shall have the power to appoint officers and committees as required to carry out the objects of the Association and it may delegate any of its powers to these officers and committees. These delegations shall remain in force until altered by the Board.
- 5.3 All positions on the Board shall be held by members of the Association. The positions on the Board shall be:
  - Office-Bearers: President, Vice-President, Secretary, Treasurer, and
  - Board Members: between two (2) and six (6) ordinary members with the number being determined by the Board.
- 5.4 If an Office-Bearer position is vacant then the position shall be shared between the Office-Bearers until this vacancy is filled
- 5.5 The Board shall develop Policy describing the additional roles and responsibilities for all positions that are not already described in these rules or the Act.
- 5.6 At every Annual General Meeting held all positions shall be declared vacant and an election shall be held to fill those vacancies for a term that shall expire at the next Annual General Meeting.
- 5.7 Nomination for a Board position vacancy shall be in writing or by invitation by a current Board member.
- 5.8 If the number of nominations is equal to the number of Board positions available, the Secretary shall report this at the Annual General Meeting, and the President shall declare such persons duly elected as Board members.

## **6. DISQUALIFICATION OF BOARD MEMBERS**

- 6.1 The office of a Board member shall become vacant if that board member is:
  - a. Disqualified by the Act, or
  - b. Expelled under these rules, or
  - c. Permanently incapacitated by ill health, or
  - d. Absent without apology for more than three (3) consecutive Board meetings.

## **7. BOARD MEETINGS**

- 7.1 The Board shall meet at least four (4) times every Financial Year.
- 7.2 Questions arising at any Board meeting shall be decided by a majority with all Board members present having one (1) vote. In the event of a tied vote the status quo shall prevail.
- 7.3 The Board may not act unless it has a quorum. The quorum for any meeting of the Board shall be four (4) members present.
  - a. A quorum consists of at least two (2) Office-Bearers and two (2) members.
  - b. Under special circumstances, a quorum may consist of at least three (3) Office-Bearers, if the ordinary Board members have apologies.
- 7.4 In the event of a casual vacancy the Board shall use its best efforts to appoint a member to fill that position for the remainder of its term.

- 7.5 In the event that casual vacancies result in the total number of Board members being less than 4, the remaining Board shall appoint members temporarily to fill all vacancies and call a General Meeting with ninety (90) days to resolve the situation.
- 7.6 A member of the Board who has a conflict of interest in any dealings with the Association must disclose that interest to the Board and shall not vote with respect to those dealings. A conflict of interest is not initiated where a majority of any members of the Association would have similar interest
- 7.7 Board members have a fiduciary duty to the Association and must always carry out their duties in the best interest of the Association.

## **8. PUBLIC OFFICER**

- 8.1 A Public Officer (as defined in the Act) shall be appointed from the membership and they shall remain the Public Officer until a successor is appointed by the Board and accepted by the Commission (as defined in the Act).

## **9. THE SEAL**

- 9.1 The Association shall have a common seal.
- 9.2 The Seal shall only be used with the authorisation of the Board, and every use shall be recorded in the Board meeting minutes. The Public Officer and one other Board member shall witness the affixing of the Seal.
- 9.3 The Seal shall be kept in the custody of the Public Officer.

## **10. RULES**

- 10.1 These rules shall bind the Association and every member to the same extent as if they had respectively signed and agreed to be bound by them.
- 10.2 Subject to the approval by a Special Resolution (as defined in the Act) these rules may be altered or replaced by new rules. Any new rules shall come into force at the time they are passed by Special Resolution of the members of the Association and shall be registered as required by the Act.

## **11. CALLING MEETINGS**

- 11.1 The Annual General Meeting shall be held between September and November of each year after giving at least thirty (30) days written notice to all members. The agenda for the meeting shall be the consideration of the accounts, reports of the Board, and Auditor (if required), the appointment of an Auditor (if required) and Board members, and any other business that would require consideration at a General Meeting.
- 11.2 The Board may call a General Meeting at any time after giving at least seven (7) days written notice to all members.
- 11.3 Special General Meetings shall be held if:
  - a. a requisition in writing of not less than thirty percent (30%) of the total number of members of the Association, shall be signed and dated by each member making the request.
  - b. a requisition shall be presented to the Board within fourteen (14) days, otherwise the requisition shall have no effect.
  - c. The Board shall convene a Special General Meeting within thirty (30) days of receipt of the requisition.
  - d. if the Special General Meeting is not held within thirty (30) days, the requisitions may call and hold a Special General Meeting and must follow the meeting procedures in **Item 12** and **Item 13**.

- 11.4 Notice of a meeting of the Association at which a Special Resolution is to be proposed shall be given at least thirty (30) days prior to the date of the meeting.

## **12. PROCEEDINGS AT MEETINGS**

- 12.1 The quorum for any general meeting of the Association shall consist of at least two (2) Office Bearers and a minimum of 10% ordinary members present.
- 12.2 If five (5) minutes have elapsed after the start time specified of the meeting and a quorum of members are not present, the meeting shall stand adjourned to any other day, but the chosen day must comply with the requirements for giving notice for that type of meeting. If at the adjourned meeting a quorum is not present within five (5) minutes of the appointed for the meeting those members present shall form the quorum.
- 12.3 The President of the Board shall preside over every meeting of the Association. If the President is unable to preside the Vice-President of the Board shall preside. If the Vice-President is unable to preside then those members present may choose a member to preside.
- 12.4 Questions arising at any meeting of the Association shall be decided by a majority on a show of hands and declared by the President.
- 12.5 If a division is then required by the President, it shall be taken in such manner as the President directs, providing that the names and voting decision of each person are recorded.
- 12.6 Any meeting of the Association may include attendance by members in multiple locations using appropriate affordable means providing a reasonable chance to participate effectively in the meeting.
- 12.7 Proxy voting is not permitted at any meeting of the Association.

## **13. MINUTES**

- 13.1 Minutes of the proceedings of any meeting held at any level of the Association shall be made and kept in a permanent form.
- 13.2 Minutes shall show at least the date, time and locations of the meeting ( any meetings may be held in multiple locations), those persons in attendance and any apologies, the name of the member presiding over the meeting, the name of the person taking the notes that become the minutes, any motions proposed and the outcome of the vote on those motions and any reasonable personal explanation a member requests to be recorded.
- 13.3 Notes made at a meeting that are intended to become the minutes must first be approved by a subsequent similar meeting. Any suggested corrections to those notes may only be put forward by those members who were at the meeting where those notes were taken. All members at the subsequent meeting may vote on whether to accept the notes to become the minutes of the previous meeting.
- 13.4 Where minutes are approved, they shall, until the contrary is proven, held to be evidence that the meeting was properly convened and held and that all appointments made at that meeting are valid.
- 13.5 Minutes of all meetings shall be available to members on request.

## **14. DISPUTE RESOLUTION**

- 14.1 Where the Board or a Committee exercises any power of adjudication that it may have in relation to a dispute between members or a dispute between itself and members the rules of natural justice will be observed.

14.2 The dispute resolution procedure shall be set out in the Policy determined by the Board.

## **15. ACCOUNTS**

15.1 The Treasurer shall keep accounting records that correctly record and explain the financial transactions and financial position of the Association.

15.2 The accounting records shall be made available to every board meeting and every meeting of the Association.

## **16. INCOME AND PROPERTY**

16.1 The funds and other property of the Association will be managed and controlled by the Board of the Association

16.2 The income and property of the Association must be applied solely towards the objects of the Association.

16.3 No income or property of the Association will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any member of the Association. However, nothing in this constitution will prevent payment in good faith to a member:

- a. in return for any services rendered or goods supplied in the ordinary and usual course of business to the Association;
- b. of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Association;
- c. of reasonable and proper rent for premises leased by any member to the Association; or
- d. paying premiums for insurance indemnifying office bearers of the Association, as allowed for by law (if applicable elsewhere in the constitution).

16.4 Any allocation of funds or property to other persons or organisations will be made in accordance with the objects of the Association and the Association will not act as a mere conduit for the passing of donations to other organisations, bodies or persons in breach of the requirements of the special conditions in item 12.1.1 of section 30-100 of the Income Tax Assessment Act 1997.

## **17. WINDING UP**

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

17.2 Surpluses arising from Deductible Donations:

- a. This clause only applies in the event that the Association is endorsed as a Deductible Gift Recipient (DGR).
- b. If any surplus remains following the winding up of the Association, the surplus will not be paid to or distributed amongst members, but will be given or transferred to another charity or charities which has (have):
  - i) objects which are similar to the objects of the Association;
  - ii) a constitution which requires its income and property to be applied in promoting its objects;
  - iii) a constitution which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Association by Item 16.2; and
  - iv) Deductible Gift Recipient (DGR) endorsement.

- c. the identity of the charity or charities referred to in Item 17.1.ii is to be determined:
  - i) by the management committee; or
  - ii) by the members, in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of South Australia for determination.
  - iii) in the event that the Association subsequently has its endorsement as a Deductible Gift Recipient (DGR) revoked, the Association must transfer all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions to another Deductible Gift Recipient (DGR) which is charitable, such Deductible Gift Recipient (DGR) to be determined by the management committee, or failing the management committee, the management committee or members, by application to the Supreme Court of South Australia.

#### 17.3 Other Surplus Funds:

- a. In the event that Item 17.1 applies, any surplus remaining which is not within the ambit of Item 17.1.ii will be paid to or distributed to another Association which has:
  - i) objects which are similar to the objects of the Association and is charitable;
  - ii) a constitution which requires its income and property to be applied solely in promoting its objects; and
  - iii) a constitution which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Association by Item 16.2
- b. The identity of the Association referred to in Item 17.2.i is to be determined:
  - i) by the management committee; or
  - ii) if the management committee do not decide or does not wish to decide, then by the member(s), in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of South Australia for determination.

#### 17.4 Other Surplus Assets

- a. Subject to the applicable incorporated Associations laws and any other applicable law, and any court order, any surplus assets that remain after the Association is wound up:
  - i) must not be distributed to the members;
  - ii) must be distributed to one (1) or more charities:
    - i) that are established for similar purposes to the principal purpose; and
    - ii) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Association.
- b. The decision as to the charity or charities to be given the surplus assets under this clause must be made by the Board. If the management committee does not make the decision, the decision must be made by resolution of the members. If the members do not make this decision, the Association may apply to the Supreme Court of South Australia to make this decision.