

*Corporations Act 2001*

A COMPANY LIMITED BY GUARANTEE

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**CONSTITUTION**  
of  
**BIG PICTURE COMPANY (AUSTRALIA) LTD**  
ACN 117 655 384

REGISTERED BY

CASTLE CORPORATE SERVICES PTY LTD  
26 Ellingworth Parade  
BOX HILL VIC 3128

# Certificate of Registration of a Company

This is to certify that

**BIG PICTURE COMPANY (AUSTRALIA) LTD**

**Australian Company Number 117 655 384**

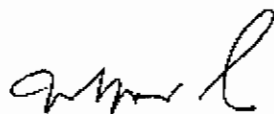
is a registered company under the Corporations Act 2001 and  
is taken to be registered in Victoria.

The company **is limited by guarantee.**

The company is a **public** company.

The day of commencement of registration is  
**the twenty-first day of December 2005.**

Issued by the  
Australian Securities and Investments Commission  
on this twenty-first day of December, 2005.



Jeffrey Lucy  
Chairman



CERTIFICATE

CONSTITUTION OF  
BIG PICTURE COMPANY (AUSTRALIA) LTD

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CORPORATIONS ACT  
A COMPANY LIMITED BY GUARANTEE  
CONSTITUTION OF

**BIG PICTURE COMPANY (AUSTRALIA) LTD**  
ACN 117 655 384

**PRELIMINARY**

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**Exclusion of Replaceable Rules**

1. The replaceable rules contained in the Act do not apply to the Company.

**Definitions**

2. (1) In this Constitution:–

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

"Alternate Director" means an Alternate Director appointed pursuant to Article 55(1).

"Applicant" means a Person who wishes to apply for membership of the Company.

"Application for Membership" means the form, the contents of which may be determined by the Board from time to time, which is to be used by an Applicant.

"Board" means the board of Directors for the time being of the Company.

"Charged Member" means a Member against whom an allegation has been made which may lead to the Discipline of that Member.

"Company" means the entity whose name upon the adoption of this Constitution was BIG PICTURE COMPANY (AUSTRALIA) LTD and shall be taken to mean the same entity by whatever name from time to time it may be called.

"Corporate Member" means a Member of the Company which is a company, a corporation or an incorporated body.

"Directors" means the directors for the time being of the Company.

"Discipline" means, in relation to a Charged Member, any type or form of penalty or sanction, financial or otherwise, imposed by the Board or the Company, including the suspension or expulsion of that Charged Member.

"Disciplined Member" means a Member who has been suspended, fined or expelled under Articles 19 or 21 hereof.

"Financial Member" means a Member who has paid by the relevant due date the Membership Fees and all other sums owed by that Member to the Company.

"Member" means a Person whose name is entered in the Register as a member of the Company.

**"Membership Fees"** means the fees payable by Members of the Company on an annual basis as determined by the Board from time to time.

**"Notice of Allegation"** means a notice in writing issued by the Secretary to a Charged Member on the instruction of the Board.

**"Person"** includes:—

- (a) a natural person; and
- (b) a registered company, corporation or incorporated association.

**"Register"** means the Register of Members.

**"Seal"** means the common seal of the Company (if any).

**"Secretary"** means the secretary for the time being of the Company, and if there are joint secretaries, any one or more of such joint secretaries.

**"Service Address"** means the address nominated by a Member for the purpose of receiving notices from the Company.

**"Unfinancial Member"** means a Member who is in default of a financial obligation (including the payment by the due date of Membership Fees) to the Company.

**"Voting Member"** means a Member who:—

- (a) has been granted membership of a class of membership which confers an entitlement to vote at a general meeting; and
- (b) is not an Unfinancial Member.

## Interpretation

3. (1) The *Acts Interpretation Act*, 1901 (Commonwealth) shall apply in the interpretation of this Constitution as if it were an act of the Commonwealth.
- (2) Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (3) Words importing any one gender shall be deemed and taken to include all genders and the singular to include the plural and the plural the singular unless the contrary as to gender or number is expressly provided.
- (4) Any reference to any statute or any section, regulation or schedule of any statute or any other legislation is a reference to that statute as amended, consolidated, supplemented or replaced.

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## PURPOSE OF COMPANY

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### Objects

4. The objects for which the Company is established are:-
- (1) to provide educational services of a variety of types and to a variety of students of all ages;
  - (2) to act as a peak representative body for other providers of educational services;
  - (3) to promote the interests of its Members to government and the funding bodies;
  - (4) to identify opportunities and strategic alliances that will contribute to the provision of quality educational services to all students,

PROVIDED that the Company shall not support with its funds any activity or endeavour to impose on or procure to be observed by its members or others any regulations or restrictions, which if an object of the Company would make it a Trade Union within the meaning of the Trade Unions Act.

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## MEMBERSHIP

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### First Members

5. The Subscribers to this Constitution shall be the first Members of the Company and:-
- (1) they must consent in writing to become a Member of the Company;
  - (2) they shall not be required to apply for membership;
  - (3) they shall be admitted as Voting Members.

### Eligibility

6. (1) Any natural person or corporation (incorporated or otherwise) committed to the objects of the Company may become a Member of the Company provided all eligibility requirements and other membership qualifications as set out in the By-Laws or elsewhere have been met.
- (2) The provisions of Article 6(1) shall not apply to the Subscribers to the Company.

### Application

7. Any Person may apply for membership of the Company by submitting to the Secretary:-
- (1) an Application for Membership;
  - (2) an agreement in writing to provide a guarantee not exceeding ten dollars (\$10.00) to defray such liabilities and expenses of the Company upon its winding up or dissolution;
  - (3) an agreement in writing to be bound by the Constitution of the Company; and
  - (4) payment of the entrance fee and the annual subscription for the first year, where relevant.



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## Admission

8. (1) All Applications for Membership shall be submitted by the Secretary to the Board which shall determine each Application for Membership. The Board shall be entitled to use any criteria for determining whether to accept or reject an Application for Membership.
- (2) If the Board determines to accept an Applicant's Application for Membership, the Secretary shall, as soon as possible:—
- (a) enter the name of the Applicant in the Register;
  - (b) notify the Applicant of the Board's determination.
- (3) An Applicant becomes a Member and is entitled to exercise the rights of membership when the name of the Applicant is entered in the Register.
- (4) The Board may decline any Application for Membership and is not bound to give reasons why the Application for Membership was not accepted.
- (5) The Secretary shall, as soon as possible after the Board has declined an Applicant's Application for Membership:—
- (a) notify the Applicant of the Board's determination;
  - (b) return to the Applicant the entrance fee and annual subscription paid by the Applicant, if any.

## Classes of Membership

9. (1) By special resolution, the Company may create different classes of membership and may confer on each such newly created class of membership such rights, privileges or benefits as the Company sees fit.
- (2) Where different classes of membership have been created, the Directors may, on accepting an Applicant's Application for Membership, admit an Applicant to a class of membership which appears appropriate to the Directors.

## Membership Fees

10. The Board shall determine:—
- (1) the quantum; and
  - (2) the due date for payment,
- of the entrance fees, the annual subscription and any other amount which an Applicant or a Member is required to pay to be admitted or remain as a Financial Member.

## Register of Members

11. (1) The Company Secretary will maintain a Register at the registered office of the Company.

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- (2) When an Applicant has been accepted for membership the Secretary will cause the Applicant's name to be entered in the Register, thereupon conferring membership.
12. (1) The Service Address of a Member in the Register will be the address nominated by the Member for the purpose of receiving notices from the Company and may be:–
- (a) a residential address;
  - (b) a postal address;
  - (c) a business address;
  - (d) a facsimile number;
  - (e) an email address.
- (2) The Company shall use its best endeavours to use the Service Address nominated by each Member for the purpose of delivering notices.
- (3) Each Member must notify the Secretary within fourteen (14) days of any change of name or Service Address of the Member and each such change shall be recorded in the Register.

### **Rights of Members**

13. The rights of any Member will not be transferable.

### **Liability of Members**

14. The liability of a Member is limited to the extent of the Member's guarantee. This liability shall continue for the duration of the membership of a Member and for a period of twelve (12) months following the cessation of membership of a Member.

### **Cessation of Membership**

15. Membership of the Company will terminate upon:–
- (1) the Company Secretary receiving from a Member a letter of resignation;
  - (2) a Member being expelled or suspended in accordance with this Constitution; or
  - (3) death of a Member.

### **Consequences of Loss of Membership**

16. A Member whose membership of the Company is terminated will be liable for all moneys due by that Member to the Company in addition to any sum not exceeding ten dollars (\$10.00) for which the Member is liable under Article 94 of this Constitution.
17. A Member whose membership is terminated will not make any claim, monetary or otherwise, on the Company, its funds or property except as a creditor thereof.
18. Any person or corporation who for any reason ceases to be a Member shall no longer represent themselves in any manner as being a Member.

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## Allegation of Charge

19. (1) Any allegation that might lead to the discipline of a Member shall be lodged with the Secretary in writing, signed by any Member and detailing the circumstance which gave rise to such allegation.
- (2) If the Secretary considers the allegation to be such as may warrant the discipline of that Member, the Secretary shall issue a Notice of Allegation to the Member informing the Member:-
- (a) of the allegation; and
  - (b) the date at which the Board of Directors will consider the allegation, such Board meeting is to be held not less than twenty eight (28) days after the date of the Notice of Allegation; and
  - (c) inviting the Member to submit a written explanation to defend the allegation; and
  - (c) inviting the Member to present himself to the Board to answer any questions which the Board may ask of him and to present his defence of the allegation.
- (3) If the Member chooses to defend the allegation, the Member must submit a written explanation which must be received by the Secretary no less than two (2) days prior to the Board meeting at which the allegation is to be heard. Such explanation shall be tabled at the Board meeting at which the allegation is to be heard and reasonable opportunity must be given for the Member to appear before the Board of Directors to answer the allegation.
- (4) The Board may:-
- (a) by two-thirds majority vote, expel; or
  - (b) by a majority vote suspend or otherwise discipline
- any Member of the Company for conduct inconsistent with any by-law, regulation or any provision contained in this Constitution or which in the opinion of the Board is unbecoming of a Member or prejudicial to the interests of the Company.
- (5) Any Member so disciplined, fined, suspended or expelled shall be notified in writing by the Secretary within twenty one (21) days of such penalty being imposed.
- (6) Any Member who may be disciplined, fined, suspended or expelled shall have the right to appeal against such penalty.
20. (1) Any Member expelled from the Company may at any time apply to the Board to be re-admitted as a Member.
- (2) No person may be a Director of the Company following expulsion or during suspension unless such a person is subsequently readmitted as a Member.

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## Appeal Against Discipline

21. (1) Any Member who has been suspended, fined or expelled (a "Disciplined Member") shall have the right to appeal against the decision of the Board at a general meeting of the Members of the Company by giving notice of his or her or its intention to appeal. Such notice must be received by the Secretary within one (1) month of the deemed date of receipt of the notice referred to in Article 19(5). Such notice of appeal shall operate as a stay of implementation of any decision.
- (2) The Board shall be required to convene a general meeting of the Members of the Company within three (3) months of the date of receipt of the notice referred to in Article 19(5) and shall give no less than one (1) month's notice of the date of that general meeting to the Disciplined Member.
- (3) The Disciplined Member shall be given the opportunity of being heard at the general meeting with or without a solicitor or counsel.
- (4) The Disciplined Member may be represented by another Member.
- (5) A solicitor, with or without counsel, may be engaged by the Company to assist the Company at such a meeting.
- (6) The Company shall be under no obligation to disclose to the Disciplined Member or any other Member the source of any information giving rise to the discipline.
- (7) The Company shall, by a two-thirds majority, decide upon the appeal.
- (8) A Disciplined Member whose appeal is unsuccessful shall pay to the Company all or any costs or expenses reasonably incurred by the Company in connection with the hearing of the appeal as the Board may determine.

## Consequences of expulsion or suspension

22. Any Member expelled from the Company may at any time apply to the Board to be readmitted as a Member.
23. No person may be a Director of the Company following expulsion or during suspension unless such a person is subsequently readmitted as a Member.

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## MEETINGS OF MEMBERS

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### Convening General Meetings

24. (1) Any Director may whenever he thinks fit convene a meeting of the Company's Members.
- (2) The Directors must convene a meeting of the Company's Members on the request of Members in accordance with section 249D of the Act. The Members may convene a meeting of the Company's Members in accordance with sections 249E and 249F of the Act.

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## Notice of General Meetings

25. A notice of a meeting of the Company's Members shall specify:-
- (1) the place, the day and the time of the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (2) the general nature of the business to be transacted at the meeting; and
  - (3) such other information as is required by section 249L of the Act.
26. The Company may hold a meeting of its Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
27. Subject to the provisions of the Act relating to agreements for shorter notice, at least twenty one (21) days notice must be given of a meeting of the Company's Members.
28. (1) Notice of every meeting of the Company's Members shall be given in the manner authorised by Article 88 to:-
- (a) every Member and to every Director; and
  - (b) the auditor for the time being of the Company.
- (2) No other person is entitled to receive notices of meetings of the Company's Members.

## Annual General Meeting

29. (1) Subject to the Act, a general meeting shall be held at least once in every calendar year and within the period of five (5) months after the end of the financial year at such time and place as may be determined by the Directors. The abovementioned general meeting shall be called the "annual general meeting" and all other meetings of the Company shall be called "general meetings".
- (2) The business of the Annual General Meeting may include any of the following, even if not referred to on the notice of meeting:
- (a) the consideration of the Annual Financial Report, Directors' Report and Auditor's Report;
  - (b) the election of Directors;
  - (c) the appointment of the auditor;
  - (d) the fixing of the auditor's remuneration.

## Chairman of General Meetings

30. (1) The Directors may elect an individual to chair a meeting of the Company's Members.
- (2) Where a meeting of the Company's Members is held and:-
- (a) a Chairman has not been elected as provided by Article 30(1); or

- (b) the person so elected is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting,

the Members present shall elect one of their number to be Chairman of the meeting (or part of it).

### **Quorum For General Meetings**

- 31. (1) No business shall be transacted at any meeting of the Company's Members unless a quorum of Members is present at the time when the meeting proceeds to business.
- (2) A quorum is constituted by two persons or one-third of the persons entitled to attend and vote at a meeting of the Company's Members whichever is the greater.
- (3) For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a body corporate that is a Member, shall be deemed to be a Member.
- (4) If the Company has only one Member, that Member may pass a resolution by the Member recording it and signing the record.

### **Adjournment of General Meetings**

- 32. If a quorum is not present within half an hour from the time appointed for the meeting:-
  - (1) where the meeting was convened upon the request of Members - the meeting shall be dissolved; or
  - (2) in any other case:-
    - (a) the meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and
    - (b) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, then the meeting shall be dissolved.
- 33. (1) The Chairman shall adjourn a meeting of the Company's Members from time to time and from place to place if the Members present with a majority of votes that may be cast at that meeting agree or direct the Chairman to do so. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (2) When a meeting of the Company's Members is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (3) Except as provided by Article 33(2), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## Voting at General Meetings

34. (1) At any meeting of the Company's Members a resolution put to the vote of the meeting shall be decided on a show of hands unless a secret ballot is (before a vote is taken or before or immediately after the declaration of the result of the show of hands) demanded:-
- (a) by the Chairman;
  - (b) by at least three (3) Members (present in person or by proxy or representative) entitled to vote on the resolution;
  - (c) by a Member or Members (present in person or by proxy or representative) with at least 5% of the votes that may be cast on the resolution on a poll.
- (3) If a secret ballot is duly demanded:-
- (a) by the Chairman; or
  - (b) by not less than one-third of the persons present at the meeting in question, such number being determined by including persons who are personally present, and persons who are represented by proxy or by corporate representative,
- it shall be taken in such manner and, subject to Article 34(4), either at once or after an interval or adjournment or otherwise as the Chairman directs, and the result of the secret ballot shall be the resolution of the meeting at which the secret ballot was demanded.
- (4) A secret ballot demanded on the election of a Chairman or on a question of adjournment shall be taken immediately.
35. In the case of an equality of votes, whether on a show of hands or on a secret ballot, the Chairman of the meeting of the Company's Members at which the show of hands takes place or at which the secret ballot is demanded has a casting vote in addition to any vote the Chairman may have in the capacity as a Member.
36. Subject to any rights or restrictions for the time being attached to any Member:-
- (1) at meetings of the Company's Members or classes of Members each Member entitled to vote may vote in person or by proxy or attorney or representative; and
  - (2) on a show of hands every person present who is a Member or a representative of a Member has one vote, and on a secret ballot every person present in person or by proxy or attorney or representative has one vote.
37. If the membership is held jointly and more than one such joint Member votes, only the vote of the Member whose name appears first in the Register counts.
38. If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or trustee or such other person as properly has the management of his estate may exercise any rights of the Member in relation to a meeting of the Company's Members as if the committee, trustee or other person were the Member.
39. A Member is not entitled to vote at a meeting of the Company's Members unless all sums presently payable by him in respect of the Company have been paid.

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40. (1) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
  - (2) Any such objection shall be referred to the Chairman of the meeting of the Company's Members, whose decision is final.
  - (3) A vote not disallowed pursuant to such an objection is valid for all purposes.

### **Proxies**

41. A Member of the Company who is entitled to attend and cast a vote at a meeting of the Company's Members may appoint a person (whether or not a Member of the Company) as the Member's proxy to attend and vote for the Member at the meeting.
42. (1) An instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or executed in accordance with the Act or under the hand of an officer or attorney duly authorised.
- (2) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote in the resolution except as specified in the instrument.
- (3) An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a secret ballot.
43. An instrument appointing a proxy shall be in a form that is similar as the circumstances allow to the form shown in Schedule A hereof.
44. An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited, not less than forty eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty four (24) hours before the time appointed for the taking of the poll, at the registered office of the Company or at such other place in Australia as is specified for that purpose in the notice convening the meeting.
45. A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, if no intimation in writing of the death, unsoundness of mind or revocation before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

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## **DIRECTORS**

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### **Qualification of Directors**

46. It shall not be necessary for a Director to be a Member of the Company by way of qualification and a Director who is not a Member of the Company shall be entitled to receive notices of and attend and speak at meetings of the Company's Members.



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### Minimum Number of Directors

47. The number of the Directors shall be not less than three (3).
48. The Company may from time to time by resolution passed at a general meeting fix the number of Directors or increase or reduce the number of Directors (but so that the number shall be not less than three).

### Appointment of Directors

49. The first Directors shall be appointed in writing by the person(s) specified in the application for the Company's registration under the Act as a person who consents to become a Member of the Company.
50. Until he resigns, dies or is removed from or vacates office as provided in this Constitution every Director shall continue to hold office.
51. (1) The Directors shall have power to:-
- (a) appoint a new Director to fill any casual vacancy; and
  - (b) appoint additional Directors.
- (2) Any Director so appointed shall hold office only until the next following annual general meeting of the Company and shall then be eligible for election.
52. Not less than seventy five per centum (75%) of those Members as carry a right to vote may at any time and from time to time by document in writing:-
- (1) appoint a new Director to fill any casual vacancy;
  - (2) appoint additional Directors.

### Appointment of a Managing Director

53. (1) The Directors may from time to time appoint one or more of their number to the office of Managing Director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.
- (2) Any such appointment of a Managing Director automatically terminates if the appointee ceases from any cause to be a Director.
54. (1) The Directors may, upon such terms and conditions and with such restrictions and as they think fit, confer upon a Managing Director any of the powers exercisable by them.
- (2) Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors.
- (3) The Directors may at any time withdraw or vary any of the powers so conferred on a Managing Director.

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## Appointment of an Alternate Director

55. (1) A Director may, with the approval of the other Directors, appoint a person (whether a Member of the Company or not) to be an Alternate Director in his or her place during such period as he or she thinks fit.
- (2) An Alternate Director is entitled to notice of meetings of the Directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in his or her stead.
- (3) An Alternate Director may exercise any powers that the appointor may exercise and the exercise of any such power by the Alternate Director shall be deemed to be the exercise of the power by the appointor.
- (4) An Alternate Director is not required to have any membership qualifications.
- (5) The appointment of an Alternate Director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to hold office as a Director.
- (6) An appointment, or the termination of an appointment, of an Alternate Director shall be effected by a notice in writing signed by the Director who makes or made the appointment and served on the Company.

## Rectifying a Casual Vacancy of Directors

56. In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum or of convening a meeting of the Company's Members for that purpose.

## Removal of Directors

57. The Members may at any time and from time to time, in accordance with the provisions of s 203D of the Act, remove any Director provided that the total number of directors shall not at any time fall below the minimum fixed by this Constitution.

## Loss of Office

58. In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:
- (1) dies or becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (2) resigns from office by notice in writing to the Company;
- (3) is absent without the consent of the Directors from all meetings of the Directors held during a period of six (6) months;
- (4) without the consent of the Company in general meeting holds any other office of profit under the Company;

- (5) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of that interest as required by Article 74;
- (6) is expelled or suspended as a Member in accordance with Articles 19 or 21.

### **Defects in Appointment of Directors**

59. All acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a member of the committee, or to act as, a Director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee.

### **Remuneration of Directors**

60. Provided the Company has not been granted a s 150 certificate by the Australian Securities and Investments Commission, the Directors may receive remuneration for their services provided that such remuneration has been approved by all Directors and that the rate of remuneration is fair and reasonable and is on reasonable commercial terms. Such remuneration shall accrue on a daily basis.
61. A Director shall be entitled to receive:–
- (1) reimbursement of out-of-pocket expenses incurred in carrying out the duties of a director where the payment does not exceed the amount previously approved by the Board; or
  - (2) payment for any service rendered to the Company in a professional or technical capacity where the provision of that service has the prior approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms; or
  - (3) payment as an employee of the Company where the terms of employment have been approved by resolution of the Board.

### **Powers of Directors**

62. (1) Subject to the Act and to this Constitution, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in promoting and forming the Company, and may exercise all such powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Members.
- (2) Without limiting the generality of Article 62(1), the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.
- (3) All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be in such manner as the Directors determine.
63. (1) The Directors may, by power of attorney, appoint any person or persons (either by name or by reference to position or office held) to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and

discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.

- (2) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

### **Delegation of Powers**

64. (1) The Directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.
- (2) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the Directors and a power so exercised shall be deemed to have been exercised by the Directors.
- (3) The members of such a committee may elect one of their number as Chairman of their meetings.
- (4) Where such a meeting is held and:-
- (a) a Chairman has not been elected as provided by Article 64(3); or
  - (b) the person so elected is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting,
- the members of the committee present shall elect one of their number to be Chairman of the meeting or part of it.
- (5) A committee may meet and adjourn as it thinks proper.
- (6) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.
- (7) In the case of an equality of votes, the Chairman shall not have a casting vote in addition to any vote the Chairman may have in the capacity as a committee member.

### **Duties of Directors**

65. (1) A Director shall act consistently with the statutory duties of Officers as provided in the Act and with the common law duties imposed on Directors.
- (2) Notwithstanding the provisions of Article 65(1), where the Company is a wholly-owned subsidiary of a body corporate, a Director of the Company is hereby authorised to act in good faith in the best interests of the holding company.
- (3) Where a Director acts in accordance with Article 65(2), that Director shall be taken to have acted in the best interests of the Company despite the Director having acted in the best interests of the holding company provided that the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act.

## Material personal interests

66. (1) Every Director shall observe the provisions of Section 191 of the Act relating to the disclosure of the interest of Directors in contracts or proposed contracts with the Company or of any office or property held by Directors which might create duties or interests in conflict with their duties or interests as Directors. It shall be permissible for a Director to give the other Directors a standing notice about a material personal interest provided such standing notice is given in accordance with Section 192 of the Act.
- (2) If a Director has a material personal interest which requires disclosure under the Act, the disclosure must be made before the Directors vote on any resolution deals directly or indirectly with the material personal interest.
- (3) Where a Director has disclosed his material personal interest in a matter:—
- (a) the Director at any meeting of Directors at which such matter is to be considered shall not be entitled to be present while the matter is being considered at the meeting nor to vote on any matter pertaining to the matter unless:—
- (i) those directors who do not have a material personal interest in the matter have passed a resolution that:—
- (A) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the Company; and
- (B) states that those directors are satisfied that the interest should not disqualify the director from voting or being present; or
- (ii) the interested director has obtained a declaration or order made by the Australian Securities and Investments Commission or its successor which entitles the director to be present and to vote;
- (b) if the matter is approved by the Directors, that matter may proceed, notwithstanding the Director's conflict;
- (c) the Director shall not be liable to account to the Company for any profit realised by any such transaction;
- (d) any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way interested cannot be avoided by the Company on the grounds of the interest of the Director in the contract or arrangement.
- (4) Provided the Director observes the provisions of sections 191 and 195 of the Act, no Director shall be disqualified by his office from contracting or entering into any arrangement with the Company either as vendor, purchaser, or otherwise.

## MEETINGS OF DIRECTORS

### Frequency of Board Meetings

67. The Board of Directors may meet together for the despatch of business and adjourn and otherwise regulate its meetings as it thinks fit and determine the quorum necessary for the transaction of business.

### **Convening Board Meetings**

68. The Board of Directors may at any time, and a Secretary shall on the requisition of a Director, convene a meeting of the Directors.

### **Quorum for Board Meetings**

69. At a meeting of the Directors, the number of Directors whose presence is necessary to constitute a quorum is such number as is from time to time determined by the Directors and, unless so determined, is two persons, provided that each such person is a Director or an Alternate Director and is entitled under the Act to vote on a motion that may be moved at that meeting.

### **Chairman of Board Meetings**

70. (1) The Directors shall elect one of their number as Chairman and another of their number as Deputy Chairman of its meetings and determine the period for which such Chairman or Deputy Chairman is to hold office.
- (2) Where a meeting of the Directors is held and:-
- (a) a Chairman or Deputy Chairman has not been elected as provided by Article 70(1); or
  - (b) the person so elected is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting,
- the Directors present shall elect one of their number to be Chairman of such meeting or part of it.

### **Voting At Board Meetings**

71. (1) Subject to this Constitution, questions arising at a meeting of Directors shall be decided by a majority of votes of Directors present and voting and any such decision shall for all purposes be deemed a decision of the Directors.
- (2) In a case of an equality of votes, the Chairman of the meeting shall not have a casting vote in addition to any vote the Chairman may have in the capacity as a Director.

### **Electronic Meetings of Directors**

72. (1) Without limiting the generality of Article 67, a meeting of Directors may be called or held using any technology consented to by all the Directors. A consent of a Director for the purposes of this Article may be a standing one. A Director may only withdraw his consent within a reasonable time before the meeting of Directors.
- (2) For the purposes of this Constitution, the contemporaneous linking together by an instantaneous communication device of a number of Directors not less than the quorum, whether or not any one or more of the Directors is out of Australia, shall be deemed to constitute a meeting of the Directors and all the provisions of this Constitution as to meetings of the Directors shall apply to any such meeting held by an instantaneous communication device so long as the following conditions are met:-

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- (a) All the Directors for the time being entitled to receive notice of the meeting of Directors (including any alternate for any Director) shall be entitled to notice of a meeting held by an instantaneous communication device and to be linked by an instantaneous communication device for the purpose of such meeting. Notice of any such meeting shall be given on the instantaneous communication device or in any other manner permitted by this Constitution; and
- (b) Each of the Directors taking part in the meeting by an instantaneous communication device must be able to hear each other of the Directors taking part at the commencement of the meeting.
- (3) A Director may not leave a meeting held by an instantaneous communication device by disconnecting his instantaneous communication device unless he has previously expressly notified the Chairman of the meeting of his intention to leave the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during such a meeting until such notified time of his leaving the meeting.
- (4) A minute of the proceedings at meetings held by an instantaneous communication device shall be sufficient evidence of such proceeding and of the observance of all necessary formalities if certified as a correct minute by the Chairman of the meeting.
- (5) For the purpose of this Article "instantaneous communication device" shall include telephone, television or any other audio and/or visual device which permits instantaneous communication.

### **Circulating Resolutions**

73. If all the Directors entitled to vote on a resolution have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the Directors held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director.
74. For the purposes of Article 73, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate document.

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## **OTHER OFFICERS**

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### **Secretary**

75. A Secretary holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.

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## **INSURANCE AND INDEMNITY OF APPLICABLE PERSONS**

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### **Applicable Persons**

76. The provisions of Articles 77, 78, 79 and 80 shall apply to Applicable Persons, which expression shall include:—

- (1) every person who is or has been an Officer of the Company;
- (2) every person who is or has been an Officer of a Related Body Corporate of the Company;
- (3) if the Directors determine, an employee or former employee of the Company or a Related Body Corporate of the Company;
- (4) if the Directors determine and to the extent permitted under the Act, an auditor or former auditor of the Company or a Related Body Corporate of the Company.

## Insurance

77. (1) To the extent permitted under the Act, the Company may pay, or agree to pay, a premium in respect of a contract insuring any one or more Applicable Persons against any liability incurred by the Applicable Person PROVIDED THAT the liability does not arise out of conduct involving:–
- (a) a wilful breach of duty in relation to the Company or a Related Body Corporate of the Company; or
  - (b) a contravention of section 182 or 183 of the Act.
- (2) To the extent permitted under the Act, the Company may pay, or agree to pay, an Applicable Person for costs and expenses incurred by that Applicable Person in defending proceedings, whatever the outcome of the proceedings.

## Indemnity

78. (1) The Company does not exempt an Applicable Person from a liability to the Company incurred in their capacity as an Applicable Person.
- (2) To the extent permitted by the Act, the Company indemnifies any Applicable Person against non legal costs incurred as an Applicable Person except:–
- (a) for a liability owed to the Company or a Related Body Corporate of the Company;
  - (b) for a liability for a pecuniary penalty order under section 1317G or compensation order under section 1317H or section 1317HA of the Act;
  - (c) for a liability owed to a third party arising out of conduct involving a lack of good faith.
- (3) To the extent permitted by the Act, the Company indemnifies any Applicable Person against legal costs incurred in defending an action for a liability incurred as an Applicable Person except:–
- (a) in defending or resisting proceedings in which the Applicable Person is found to have a liability for which they could not be indemnified under Article 78(2); or
  - (b) in defending or resisting criminal proceedings in which the Applicable Person is found guilty; or



- (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission (and any of its successors) or a liquidator for a court order if the grounds for making the order are found by a court to have been established; or
  - (d) in connection with proceedings for relief to the Applicable Person under the Act in which the Court denies relief.
- (4) Where the costs and expenses incurred by an Applicable Person under Articles 78(1), 78(2) or 78(3) are recovered by the Company under an insurance policy taken out or paid for by the Company pursuant to Article 77, the extent of the indemnification of an Applicable Person shall be reduced accordingly.

### **Loan to an Applicable Person**

79. (1) To the extent permitted by the Act, the Directors may give a loan or advance to an Applicable Person to assist with the payment of costs and expenses of the Applicable Person which may be incurred under Article 78, where, in the opinion of the Directors, the costs and expenses are likely to become an amount for which the Company may become liable.
- (2) If, upon a determination of the proceedings, the costs and expenses for which the loan or advance was given are not the liability of the Company, the loan or advance given to the Applicable Person shall be recoverable according to the terms of the loan or advance.
80. In Articles 77, 78 and 79, the term "proceedings" means any proceedings and any appeal in relation to any proceedings, whether civil or criminal, being proceedings in which it is alleged that the Applicable Person has done or omitted to do some act, matter or thing in his capacity under which the person has become an Applicable Person (including proceedings alleging that the Applicable Person was guilty of negligence, default, breach of trust or breach of duty in relation to the Company or a Related Body Corporate).

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## **ADMINISTRATION**

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### **Minutes**

81. The Directors will cause minutes of:-
- (1) all proceedings and resolutions of meetings of the Company's Members;
  - (2) all proceedings and resolutions of meetings of the Directors, including meetings of a committee of Directors;
  - (3) resolutions passed by Members without a meeting;
  - (4) resolutions passed by Directors without a meeting,
- to be duly entered into the books kept for that purpose in accordance with the Act.
82. A minute recorded and signed in accordance with the Act is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

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## Inspection of Records

83. Books containing the minutes of the Company's Members and resolutions passed by Members without a meeting will be open for inspection by any Member free of charge.
84. Subject to the Act, the Directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members other than Directors, and a Member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in meeting of the Company's Members.

## Execution of Documents

85. (1) The Company may have a Seal, known as the common seal, on which its name, its Australian Company Number and the words "Common Seal" are engraved.
- (2) If the Company has a seal the Directors shall provide for the safe custody of the Seal.
- (3) The Seal shall be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal.
- (4) The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:-
- (a) two Directors; or
  - (b) one Director and one Secretary; or
  - (c) one Director and another person appointed by the Directors for that purpose.
- The signature of such persons may be affixed to the document by manual, autographic or mechanical means.
- (5) The Company may execute a document without using a seal if the document is signed by:-
- (a) two Directors; or
  - (b) one Director and one Secretary; or
  - (c) one Director and another person appointed by the Directors for that purpose.
- (6) A facsimile signature may not be affixed to a document unless the auditors, internal auditors or bankers of the Company have reported to the Board in writing that the document may be sealed in that manner.

## Creation, Amendment and Repeal of By Laws

86. The Board has power to make By Laws concerning membership application and qualification for membership of the Company and any other matter which the Board believes suitable for including in such By Laws.

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## Amendment of Constitution

87. The Company may only alter this Constitution by special resolution passed at a general meeting of the Members.

## Notices

88. (1) A notice may be given by the Company to any Member either:-
- (a) by serving it on him personally;
  - (b) by sending it by post to him at his address as shown in the Register or to the Service Address supplied by him to the Company for the giving of notices to him.
- (2) Where a notice is sent by:-
- (a) post, service of the notice shall be deemed to be effective by properly addressing, prepaying and posting a letter containing the notice, and to have been effected, in the case of a notice of a Member, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
  - (b) by facsimile transmission, service of the notice shall be deemed to be effected within twenty four (24) hours of the transmission, unless the Company receives notification that the transmission was not successful.
  - (c) by electronic transmission, service of the notice shall be deemed to be effected within twenty four (24) hours of the transmission, unless the Company receives notification that the transmission was not successful.
- (3) A notice may be given by the Company to joint Members by giving the notice to the joint Member first named in the Register.

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## FINANCIAL MATTERS

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### Application of Income and Property

89. (1) The income and property of the Company however derived will be applied solely towards the promotion of the objects of the Company as set out in this Constitution, and no portion of the income or the property of the Company will be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to Members of the Company.
- (2) Nothing in this Constitution shall prevent the payment in good faith:-
- (a) of the payments contained in Articles 60 and 61 hereof;
  - (b) payment of insurance premiums to the extent permitted by the Act; and
  - (c) indemnification to the extent permitted by the Act and this Constitution.

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## Dividends and Reserves

90. No payment of dividends or other distributions to Members shall be made.

## Accounts

91. The Directors will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.

## Audit

92. (1) A registered company auditor must be appointed. No appointment of an auditor shall be effective unless the auditor has first tendered to the Company a signed consent to so act.

(2) The auditor may not be an officer of the Company.

(3) The first auditor shall be appointed within one (1) month of the registration of the Company by:—

(a) the Directors; or

(b) the Members,

and shall hold office until the first Annual General Meeting of the Company.

(4) The Company must:—

(a) at its first Annual General Meeting appoint an auditor; and

(b) at each subsequent Annual General Meeting, if there is a vacancy in the office of auditor, appoint an auditor to fill the vacancy.

(5) An auditor appointed pursuant to Article 92(4) shall hold office until resignation or removal from office or until the auditor is not capable of acting as auditor for any reason.

(6) An auditor may be removed by resolution passed at a General Meeting.

(7) Where an auditor resigns or is removed in accordance with Article 92(6), the Board may appoint another person to be the auditor.

(8) The auditor appointed pursuant to Article 92(7) shall remain as auditor until the next Annual General Meeting, whereupon his appointment shall be subject to the ratification or otherwise of the Members.

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## WINDING UP

### Procedure

93. The Company may be dissolved by a special resolution of Members at a meeting of the Company Members.

### **Contribution of Members on Winding Up**

94. Every Member of the Company undertakes to contribute to the assets of the Company in the event of the Company being wound up while he or she is a Member, or within one year of ceasing to be a Member such amount as may be required not exceeding ten dollars (\$10.00), for the payment of the debts and liabilities of the Company contracted whilst the Member or past Member as the case may be was a Member of the Company, and the costs charges and expenses of winding up and for the adjustment of the rights of the contributors amongst themselves.

### **Distribution of Property on Winding Up**

95. Where on the winding up of the Company or dissolution of the Company, there is a surplus of assets after satisfying all the Company's liabilities and expenses, the surplus will not be paid or distributed to the Members of the Company but will be given or transferred to such other institution or company having similar objects to those described in Article 4, is an institution or body and which prohibits the distribution of income, profit or assets to its Members and which has gained approval from the Deputy Commissioner of Taxation to be recognised as a body whose income is exempt from taxation. Such institution or company will be determined by the Members of the Company on or before the time of such winding up or dissolution, failing such determination the institution or company shall be determined by application to the Supreme Court in the State of incorporation.

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The persons whose details are shown below are the persons specified in the application for the Company's registration as persons who consent to become Members of the Company and who have agreed to the terms of the foregoing Constitution.

Full names of Subscribers

Frank Bruce KILOH  
46 Thomas Street  
HAMPTON VIC 3188

John Stuart HOGAN  
178L Hampton Road  
BEACONSFIELD WA 6162

Susan Denise FRENCH  
206 Dryandra Street  
O'CONNOR ACT 2602

Peter Geoffrey FLYNN  
34 Dolphin Street  
RANDWICK NSW 2031

Vivienne Mary WHITE  
5 Dover Road  
WILLIAMSTOWN VIC 3016

Joanne Marie ROBERTS  
39 Durack Court  
TAYLORS HILL VIC 3037

Dennis Sheldon LITTKY  
32 John Street  
PROVIDENCE, RHODE ISLAND 02906  
UNITED STATES

DATED: 21st December, 2005

SCHEDULE A

BIG PICTURE COMPANY (AUSTRALIA) LTD

I/We .....,

being a Member/Members of the abovenamed Company, hereby appoint

.....of.....

or, in his absence,

.....of.....

as my/our proxy to vote for me/us on my/our behalf at the meeting of the Members of the Company to be held on the ..... day of ....., 20... and at any adjournment of that meeting.

SIGNED this ..... day of ....., 20...

SIGNATURE  
OF MEMBER:

\_\_\_\_\_

[SIGNATURE]

# This form is to be used \* in favour of/\* against the resolution(s).

\* Strike out whichever is not desired.

# To be inserted if desired.