



## PROPOSED AMENDMENTS TO AWGACS ARTICLES OF ASSOCIATION

1. The following definition in Article 2 has been replaced with the following:

"Distributable Fund" means the fund established for the purposes of holding royalties on trust for writers of literary and dramatic works, and other works;

2. The following definitions are added to Article 2:

"Distributable Royalties" means all royalties that are distributable to Members, and other writers of literary and dramatic works in accordance with these Articles;

"Errors, Omissions and Growth Fund" means the fund established and operated by the Company for the purpose of Article 62(c);

"Royalty Collections" means all royalties received by the Company on behalf of Members and other writers of literary and dramatic, and other works;

3. The Following definitions are removed from Article 2:

"Trust Period" in relation to moneys held in the Special Trust Account means a period of 4 years or such further period not exceeding 2 years as the directors may in their discretion determine prior to the expiration of 4 years from the end of the Accounting Period in relation to which the moneys are transferred to the Special Trust Account under Article 64(a);

"Writers' Payments" means all payments payable to Members and other writers of literary and dramatic works and other works received by the Company on behalf of such Members and writers;

"WP Fund" means the fund established in accordance with Article 62(a);

4. Article 5 is amended to add the following underlined wording:

Any person who is:

- (a) a full member of AWG;
- (b) a writer of a literary or dramatic work or other work who is not a full member of AWG; or
- (c) any other person whom the Board consider fit to be a Member; or
- (d) the executor, administrator or beneficiary of the estate of a person referred to in (a) or (b)

will be eligible for admission as a Member of the Company.

4. Article 8 is amended so the following words in red have been removed:

When an applicant has been accepted for membership the Secretary will as soon as possible send to the applicant written notice of acceptance ~~and a request for payment of the first annual subscription where applicable. On despatch of the written notice of acceptance or, where applicable, on payment of the first annual subscription the applicant will become a Member of the Company, provided nevertheless that if any required payment is not made within two calendar months after the date of the notice, the Board may in its discretion cancel its acceptance of the applicant for membership of the Company.~~

5. Article 12 is amended to remove the previous wording (red) and adding new wording (underlined):

A new Member will be considered inactive until their first allocation from the Distributable Fund. In the event that any Member does not, during any 5 ~~10~~ consecutive financial years of the Company, have allocated to the Member ~~him/her~~ any share of moneys collected by the Company, then that Member will be considered inactive and will not be entitled to notice of, or to attend or vote at, any general meeting held after the end of the said 5 ~~10~~ consecutive financial years and until after the end of a financial year during which that Member will have been allocated to them ~~him/her~~ a share of moneys collected by the Company.

6. Article 13 is amended to remove the previous wording (red) and adding new wording (underlined):

A Member may at any time, by giving 6 months' notice in writing to the Secretary, resign the Member's ~~his/her~~ membership of the Company but will remain ~~continue~~ liable for ~~any annual subscription and~~ all arrears due and unpaid at the date of the Member's resignation and for all other moneys due by the Member ~~his/her~~ to the Company and in addition for any sum for which the Member ~~s/he~~ is liable as a Member of the Company under Clause 5 of the Memorandum of Association of the Company.

7. Article 14 is amended to remove the previous wording (red) and adding new wording (underlined):

Subject to Article 13, all rights privileges and obligations of the Members will cease on the day of cessation of membership and the Member will cease to have any claim on the assets of the Company and will not be entitled to participate in any further allocations of moneys held or received by the Company provided however that any person who has ceased to be a Member will be entitled, despite the cessation of membership, to continue to receive any allocation and distribution of moneys to which the Member ~~s/he~~ becomes entitled in respect to any period during which the person ~~s/he~~ was a Member of the Company.

8. Article 15 is amended to remove the previous wording (red) and adding new wording (underlined):

If any Member wilfully refuses or neglects to comply with the provisions of the Memorandum or Articles of Association of the Company, or is guilty of any conduct which in the opinion of the Board is unbecoming of a Member or prejudicial to the interests of the Company, the Board will have power by resolution to censure, fine, suspend or expel the Member from the Company provided however that at least one week before the meeting of the Board at which such a resolution is passed the Member will have had notice of the meeting, of what is alleged against the Member ~~him/her~~ and of the intended resolution and that the Member ~~s/he~~ will, at the meeting and before the passing of the

resolution, have had an opportunity of giving, orally or in writing, any explanation or defence the Member s/he may think fit, and provided however further that the Member may, by notice in writing lodged with the Secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Board, elect to have the question dealt with by the Company in general meeting. In that event a general meeting of the Company will be called for that purpose and if at the meeting such a resolution is passed by a majority of two-thirds of those present and voting (the vote to be taken by ballot) the Member concerned will be dealt with accordingly and, in the case of a resolution for the Member his/her expulsion, the Member will be expelled.

9. Article 17 has been replaced with the following:

Any director may convene a General Meeting if seconded by another director.

10. Article 18 is amended to remove the previous wording (red) and adding new wording (underlined):

Subject to the provisions of the Law relating to special resolutions and agreements for shorter notice, 21 14 days' notice at least (exclusive of the day on which the notice is served or deemed to be served, and exclusive of the day for which the notice is given) specifying the place, the date and time of meeting, and in the case of special business, the general nature of that business, will be given to those persons entitled to receive it.

11. Article 20 is amended to remove the previous wording (red) and adding new wording (underlined):

No business will be transacted at a General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Except as otherwise provided 5 20 Members present in person will be a quorum. For the purposes of this Article "Member" includes a person attending as a proxy.

12. Article 22 is amended to remove the previous wording (red) and adding new wording (underlined):

The Chair of the Board will preside as chairperson at every General Meeting of the Company, or if the Chair of the Board s/he is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, then the Members present will elect one of their number to be chairperson of the meeting.

13. Article 28 is amended to remove the previous wording (red) and adding new wording (underlined):

A Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by the Member's his/her committee or by the Member's his/her trustee or by such other person as properly has the management of the Member's his/her estate, and any such committee, trustee or other person may vote by proxy or attorney.

14. Article 29 is amended to remove the previous wording (red) and adding new wording (underlined):

No Member will be entitled to vote at any general meeting if the Member is inactive, as defined in Article 12, his/her annual subscription is more than one month in arrears at the date of the meeting.

15. Article 30 is amended to remove the previous wording (red) and adding new wording (underlined):

The instrument appointing a proxy will be in writing signed by the Member or the Member's his/her attorney duly authorised in writing or, if the appointor is a corporation, either under seal or signed by an officer or attorney duly authorised in writing. The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll. A Member will be entitled to instruct the Member's his/her proxy in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote as the Member s/he thinks fit.

16. The proxy form at Article 31 has been amended to remove the previous wording (red) and adding new wording (underlined):

*Australian Writers' Guild Authorship Collecting Society Limited ("the Company")*

*I, ..... of ..... being a Member of the Company appoint ..... of ..... as my proxy to vote for me on my behalf at the (Annual General Meeting or General Meeting+ as the case may be) of the Company to be held on .....199 and at any adjournment of the meeting.*

*My proxy is authorised to vote +in favour of/+against the following resolutions:*

*(Insert details if applicable)*

*Signed:199*

.....

*Date:*

.....

*NOTE: In the event of the Member desiring to vote for or against any resolution the Member s/he will instruct their his/her proxy accordingly. Unless otherwise instructed, the proxy may vote as the proxy s/he thinks fit. + delete whichever is not applicable.*

17. Article 37 (b) is amended to remove the previous wording (red) and adding new wording (underlined):

The nomination, which must be in writing and signed by the Member and the Member's his/her proposer and seconder, will be lodged, together with a biographical note about the candidate of not more than 100 words, with the Secretary at least 28 days before the date set by the Board for the election. The election date must be within 14 days prior to the date of the Annual General Meeting.

18. Article 37 (g) is amended to remove the previous wording (red) and adding new wording (underlined):

The voter will mark the voter's his/her ballot paper by marking a cross opposite the names of each of the candidates for whom the voter votes s/he votes. The ballot paper will be placed in a sealed

envelope on the front of which the Member will write the Member's his/her name, and sign his/her signature. The envelope will be returned to the Secretary prior to the date of the election.

19. Article 40 is amended to remove the previous wording (red) and adding new wording (underlined):

The Company may, by special resolution of which notice pursuant to Section 227 of the Law has been given, remove any director before the expiration of the director's his/her period of office, and may, by ~~an~~ special resolution appoint another person in the director's his/her place. The person so appointed will hold office only until the next Annual General Meeting.

20. Article 41 (a) is amended to remove the previous wording (red) and adding new wording (underlined):

becomes insolvent under administration or makes any arrangement or composition with the director's his/her creditors generally;

21. Article 41 (e) is amended to remove the previous wording (red) and adding new wording (underlined):

resigns the director's his/her office by notice in writing to the Company;

22. Article 42 (a) is amended to remove the previous wording (red) and adding new wording (underlined):

disqualified by virtue of his/her office from holding any office of profit in the Company and any director may be or become a director of, or hold an office of profit in, any other company promoted by the Company or in which the Company may be interested as vendor, shareholder or otherwise;

23. Article 42 (b) is amended to remove the previous wording (red) and adding new wording (underlined):

disqualified by virtue of his/her office from contracting with the Company either as vendor, purchaser or otherwise, and no such contract or arrangement entered into by the Company in which any director is in any way directly or indirectly interested will be avoided; or

24. Article 42 (c) is amended to remove the previous wording (red) and adding new wording (underlined):

liable to account to the Company for any profit arising from any office of profit or realised by any such contract or arrangement by reason only of the director holding that office or of the fiduciary relations established because of it, provided however that a director must disclose to the Company any interest referred to in Article 42 (a), (b) or (c), and must not vote in relation to any contract or arrangement with the Company in which the director s/he is in any way, whether directly or indirectly, interested or in relation to any matter arising out of such contract or proposed arrangement. If the director s/he votes in contravention of this article, the director's his/her vote will not be counted.

25. Article 43 is amended so the following words in red have been removed:

The remuneration of the directors will from time to time be determined by the Company in a General Meeting but until that time will be \$2,000 per year. The directors will also be paid all travelling, accommodation and other expenses properly incurred by them in attending meetings of the Board or in connection with the business of the Company.

26. Article 48 is amended to remove the previous wording (red) and adding new wording (underlined):

The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit, but will not meet less than 4 6 times each year. Any 2 members A member of the Board may at any time, and the Secretary will on the requisition of a member of the Board, convene a meeting of the Board. All members of the Board are entitled to receive reasonable notice of any Board meeting.

27. Article 52 is amended to remove the previous wording (red) and adding new wording (underlined):

The office bearers of the Company, being the Chair and the Secretary the Secretary and the Treasurer, will be elected by the Board.

28. Article 53 is amended to remove the previous wording (red) and adding new wording (underlined):

The Chair of the Board will preside as chairperson at every meeting of the Board, or if the Chair s/he is not present within ten minutes after the time appointed for holding the meeting, or is unwilling to act, then the members of the Board may choose one of their number to be chairperson of the meeting.

29. Article 58 is amended to have 3 sub articles. The Article is as follows with the additional Sub Article underlined:

The directors will cause separate accounts and records to be kept in relation to:

- (a) the receipt and expenditure of Royalty Collections;
- (b) the manner in which the entitlement of Members to Distributable Royalties is determined and carried out;
- (c) the receipt and expenditure of moneys held in reserve as part of the Errors, Omissions and Growth Fund

and, in doing so, will as far as possible, adopt a consistent practice in allocating receipts and expenditure to Accounting Periods.

30. Article 60 is amended to remove the previous wording (red) and adding new wording (underlined):

The writer of any work not being a Member will be permitted to inspect the records of the Company as they relate to that work at such times and places and under such reasonable conditions or regulations that the directors from time to time determine provided however that any such writer gives 7 days' notice to the Company in writing that the Member s/he wishes to do so.

31. Articles 61 through to 72 have been replaced (including headings) with the following:

#### **RECEIPT AND ALLOCATION OF MONIES**

61. Any monies received by the Company from any source other than royalties may be dealt with at the absolute discretion of the Board.
62. In each Accounting Period, Royalty Collections will be expended in the following order:
- (d) For the payment of all reasonable expenses that are incidental to the conduct, management and operation of the Company, as the Board considers appropriate;
  - (e) For such special purposes that the Board considers in the interest of the Company, such as cultural purposes, provided that the funds expended for special purposes do not exceed 5% of Royalty Collections for that Accounting Period;
  - (f) To be set aside in the Errors, Omissions and Growth Fund to meet any anticipated future obligations as the Board considers appropriate; and
  - (g) To be allocated and distributed according to the Company's distribution policy, which may be amended by the Board from time to time.
63. If the Company is unable to distribute monies accrued under Article 62(d) to a person because the person is not a Member or for any other reason, the Company must hold that money in trust as specified in Article 64 until such time as payment can be made to that person under Article 62.

#### **UNDISTRIBUTED MONIES**

64. If any monies remain undistributed under Article 62 for a period of four years from the end of the Accounting Period in which the Royalty Collections were collected, the monies may be distributed as the Board sees fit, unless the Board is satisfied that special circumstance justify the monies to be held on trust for a further period not exceeding two years.

#### **DETERMINATION OF ENTITLEMENT AND DISTRIBUTION OF MONIES**

65. The Board must determine the total amount of Distributable Royalties at least once in each Accounting Period.
66. The Board must endeavour to ensure that the Distributable Fund is allocated equitably and accurately.
67. In determining the allocation of the Distributable Fund, the Board must consider all relevant matters such as:
- (a) Records and information in relations to the Royalty Collections;

- (b) Any information obtained by the Company used to ascertain the nature and extent of the share of the Distributable Fund to be paid to each Member; and
  - (c) Any obligation the Company has as part of any professional rules, codes or similar regulations that bind the Company.
68. The Board may request that an individual supply the Company with any details, including without limitation details relating to any Copyright Work or a Registered Title for any purpose, including verifying that the individual is the writer of any Copyright Work.
69. Except as provided in Article 71, each and every decision by the Board in relation to the allocation of the Distributable Fund will be conclusive and binding on all Members.
70. Where the accumulated value of Distributable Royalties allocated to a Member is less than \$100, or such other sum that the Board may determine from time to time, the Board may retain the amount in trust until the next allocation from the Distributable Fund.
71. If the Board determines that a Member has been overpaid Distributable Royalties, the Company may deduct an amount equivalent to the overpayment from any subsequent allocation to that Member. If deemed necessary by the Board, AWGACS may require Members to pay back the excess royalties.
72. If a person claims to be entitled to Distributable Royalties and has not been allocated any Distributable Royalties, the Board may, if satisfied that the person is entitled, make any payment to the person the Board considers fit, from the Errors, Omissions and Growth Fund.
32. Article 74 is amended to remove the previous wording (red) and adding new wording (underlined):
- Any notice required by law or by or under these Articles to be given to any Member will be given by sending it by post or by email to the Member him/her at the him/her address as supplied to the Company by the Member. Any such notice will be deemed to have been given 48 hours after the notice is sent either by post or email. ~~Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, 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.~~
33. Article 77 is amended to remove the previous wording (red) and adding new wording (underlined):
- Every Member of the Board, Auditor, and other officer for the time being of the Company will be indemnified out of the assets of the Company against any liability arising out of the execution of the duties of their his/her office which is incurred by them him/her in defending any proceedings, whether civil or criminal, in which judgment is given in their his favour or in which they are s/he is acquitted or in connection with any application under the Law in which relief is granted ~~to him/her~~ by the Court pursuant to Section 241(2) of the Law in respect of any negligence, default, breach of duty or breach of trust.