

Explanatory Notes on Items of Business.

Item 1 – Modification of Memorandum and Articles of Association – All proposed amendments

BACKGROUND AND PROPOSED AMENDMENTS

See Background and Proposed Amendments for the following Items:

Item 2 - Authorial Directors and New Zealand Director combined

Item 3 - Authorial Directors

Item 4 – New Zealand Director

Item 5 – Director Term of Office

Item 6 – Director Term Limit

Item 7 – Modernisation and Clarification of Memorandum and Articles

The establishment of Authorial Director positions and a New Zealand Director position, as well as changes to the Director term of office and term limit and the modernisation and clarification of the Articles requires amendment of the Memorandum and Articles of Association. The proposed amendments are comprised by all amendments set out in the following Appendixes:

Appendix A - Authorial Director and New Zealand Director Amendments combined

Appendix D - Director Term of Office Amendments

Appendix E - Director Term Limit Amendment

Appendix F – Modernisation and Clarification of Articles Amendments

BOARD RECOMMENDATION – RESOLUTION 1

The Board unanimously support the resolution and recommends that the members vote in favour of it. Those members of the Board with voting entitlements will be voting in favour of the resolution.

The remaining resolutions will only be put if Resolution 1 is not passed.

Item 2 – Modification of Articles of Association – Authorial Directors and New Zealand Director combined

BACKGROUND

See Background for Items 3 and 4.

PROPOSED AMENDMENTS

See Proposed Amendments for Items 3 and 4.

In addition, it is proposed that a person may only nominate for one category of Non-General Candidate at a given election - that is as either one of the categories of Authorial Candidate or as a New Zealand Candidate.

This limitation on candidacy in multiple categories aims to prevent future complications that would arise when attempting to replace a retiring Director who covers more than one category.

The establishment of both Authorial Director positions and a New Zealand Director position requires amendment of the Articles of Association. The proposed amendments are set out in Appendix A.

BOARD RECOMMENDATION – RESOLUTION 2

The Board unanimously support the resolution and recommends that the members vote in favour of it. Those members of the Board with voting entitlements will be voting in favour of the resolution.

The resolutions at Items 3 and 4 will only be put if Resolution 2 is not passed.

Item 3 – Modification of Articles of Association – Authorial Directors

BACKGROUND

The Screenrights Board comprises twelve Directors. To promote independent views and to ensure a range of experience and skills, all Directors are non-executive Directors.

There are no nominees or Directors who represent a specific constituency within the membership. This differs from other collecting societies, such as the Copyright Agency for example.

All Screenrights Directors acknowledge that their legal duty is to act in the best interests of Screenrights, not in the interests of individual members, member groups or groups that may have supported their election to the Board.

However, Screenrights Directors may be incidentally associated with member organisations and/or have knowledge of the views of member groups. The Screenrights Board recognises that it is desirable and proper for Directors to present the views of individual members or member groups to the Board.

The current composition of the Board includes Directors that have knowledge of member groups such as composers, screenwriters and directors. The Screenrights Board acknowledges that it has benefited greatly from the contribution of such Directors.

Accordingly, the Board has been considering the issue of Authorial Directors for some time.

PROPOSED AMENDMENTS

The introduction of Authorial Directors to the Board ensures that the Board continues to benefit from the inclusion of Directors that are in a position to present the view of authorial members or member groups to the Board.

As is the case with current Directors, Authorial Directors will have a legal duty to act in the best interests of Screenrights, not in the interests of individual members, member groups or groups that may have supported their election to the Board.

It is proposed that the Board include three Authorial Directors as follows:

1. A writer who would qualify as a full member of the Australian Writers Guild (AWG) or New Zealand Writers Guild (NZWG) on the basis of their screenwriting credits or an office holder of AWG or NZWG (**Screenwriter Director**);

2. A director who would qualify as a full member of the Australian Directors Guild (ADG) or the Directors and Editors Guild of NZ (DEGNZ) on the basis of their screen directing credits or an office holder of ADG or DEGNZ (**Screen Director**); and
3. A composer who would qualify as a member of APRA on the basis of composing music that has been created for screen or an office holder of APRA (**Composer Director**).

Authorial Directors will be introduced over three years of annual Members Meetings, starting with the Screenwriter Director, then the Screen Director and finally the Composer Director.

Potential Authorial Candidates must notify Screenrights of their intention to be elected as an Authorial Director and will, if required, provide evidence of their eligibility by way of a statutory declaration.

A person may only nominate for one category of Authorial Candidate at a given election.

Members will be notified of which candidates are seeking to be elected as an Authorial Director and, if so, in which category. The Authorial Candidate who receives the highest number of votes in each category will fill the relevant Authorial Director position.

Authorial Candidates are also eligible for election to General Director positions. Where, at a given election, there are both Authorial and General Director positions available, the position of the Authorial Director will be determined first. Thereafter, other Authorial Candidates are considered for the General Director positions based on the number of votes received relative to other Director candidates.

Therefore, the Board anticipates that it may be the case that, at any given time, although there is only one Authorial Director position available on the Board for each of the given categories (Screenwriter Director, Screen Director or Composer Director), there may be more than one Director voted onto the Board who is in a position to present the views of the relevant authorial category members or member groups to the Board.

In circumstances where there is no Authorial Candidate eligible to be elected as the relevant Authorial Director, then that position of Authorial Director will be treated as a casual vacancy and the Board will consult the AWG and NZWG in respect of the Screenwriter Director category, the ADG and DEGNZ in respect of the Screen Director category and APRA in respect of the Composer Director category.

When an Authorial Director of a certain category (eg. Composer Director) retires they can only be replaced by a person who is eligible to be elected for that same category.

Similarly, where an Authorial Director appoints a person to act as an Alternate Director, the person appointed must meet the same requirement as relevant for that Authorial Director.

The establishment of Authorial Director positions requires amendment of the Articles of Association. The proposed amendments are set out in Appendix B.

BOARD RECOMMENDATION - RESOLUTION 3

The Board unanimously support Resolution 2 outlined in Item 2, which includes both Authorial Directors and a New Zealand Director. Those members of the Board with voting entitlements will be voting in favour of that resolution.

However, in the alternative, should members not wish to vote in favour of Resolution 2, the Board recommends that the members separately vote in favour of this resolution in relation to Authorial Directors.

Item 4 – Modification of Articles of Association – New Zealand Director

BACKGROUND

The Screenrights Board comprises twelve Directors. To promote independent views and to ensure a range of experience and skills, all Directors are non-executive Directors.

There are no nominees or Directors who represent a specific constituency within the membership. This differs from other collecting societies such as Copyright Agency for example.

All Screenrights Directors acknowledge their legal duty is to act in the best interests of Screenrights, not in the interests of individual members, member groups or groups that may have supported their election to the Board.

However, Screenrights Directors may be incidentally associated with member organisations and/or have knowledge of the views of member groups. Screenrights Board recognises that it is desirable and proper for Directors to present the views of individual members or member groups to the Board.

The current composition of the Board includes a Director who resides in New Zealand and has knowledge of the views of New Zealand members. Screenrights Board acknowledges that it has benefited greatly from the contribution of this Director.

Moreover, the Board recognises that the territory of New Zealand is of particular importance to Screenrights due to Screenrights' role in offering licenses to New Zealand educational establishments under section 48 of the Copyright Act 1994 to copy or communicate programs.

PROPOSED AMENDMENTS

The introduction of a New Zealand Director to the Board ensures that the Board continues to benefit from the inclusion of a Director that is in a position to present the view of New Zealand members or member groups to the Board.

As is the case with current Directors, the New Zealand Director will have a legal duty to act in the best interests of Screenrights, not in the interests of individual members, member groups or groups that may have supported their election to the Board.

It is proposed that the Board include one New Zealand Director, meaning a Director who is ordinarily resident in New Zealand.

Having regard to the fact that the Board currently includes a person who would qualify as a New Zealand Director and whose term expires in 2020, the New Zealand Director will be elected at the second annual Members' meeting held after the adoption of these Articles.

Where there is no New Zealand Candidate eligible to be elected as the New Zealand Director, then the position of the New Zealand Director will be treated as a casual vacancy.

Potential New Zealand Candidates must notify Screenrights of their intention to be elected as a New Zealand Director and will if required provide evidence of eligibility by way of a statutory declaration.

Members will be notified of which candidates are seeking to be elected as the New Zealand Director and, if so, in which category. The New Zealand Candidate who receives the highest number of votes will fill the New Zealand Director position.

New Zealand Candidates are also eligible for election to General Director positions. Where, at a given election, there are a New Zealand Director position and General Director positions available, the position of New Zealand Director will be determined first. Thereafter, other New Zealand Candidates are considered for General Director positions based on the number of votes received relative to other Director candidates.

Therefore, the Board anticipates that it may be the case at any given time that although there is only one New Zealand Director on the Board, there may be more than one Director voted onto the Board who is in a position to present the views of New Zealand members or New Zealand member groups to the Board.

In circumstances where there is no New Zealand Candidate eligible to be elected as the New Zealand Director, then the position of New Zealand Director will be treated as a casual vacancy.

When a New Zealand Director retires they can only be replaced by a person who is eligible to be elected as a New Zealand Director. Similarly, where a New Zealand Director appoints a person to act as an Alternate Director, the person appointed must be eligible for election as a New Zealand Director.

The establishment of a New Zealand Director position requires amendment of the Articles of Association. The proposed amendments are set out in Appendix C.

BOARD RECOMMENDATION – RESOLUTION 4

The Board unanimously support Resolution 2 outlined in Item 2, which includes both Authorial Directors and a New Zealand Director. Those

members of the Board with voting entitlements will be voting in favour of that resolution.

However, in the alternative, should members not wish to vote in favour of the Resolution 2, the Board recommends that the members separately vote in favour of this resolution in relation to a New Zealand Director.

Item 5 – Modification of Articles of Association – Director Term in Office

BACKGROUND

Under Article 6.18 of the Articles of Association, a Director may not retain office for more than three calendar years or beyond the third annual Member's meeting following their election (whichever is longer) without submitting for re-election.

Further, under Article 6.19, one third of Directors in office (or if not a multiple of three to nearest number but not less than a third) must retire at the third annual Member's meeting. A one third rule of this nature is intended to ensure a minimum number of directors retire each year, though they may stand for re-election.

Where the one third rule is not satisfied via the operation of the three-year term limit in Article 6.18, then Article 6.21 provides a mechanism to determine which other Directors must retire by rotation by requiring that the Directors longest in office retire, calculated from their date of appointment.

Article 6.22 states that where two or more Directors have been in office an equal length of time that they can agree between themselves who retires and in default of that, then retiring Directors are to be determined by drawing lots in any manner determined by the Chair.

Under Article 6.11, casual vacancies are not taken into account in determining which Directors are to retire on rotation.

Screenrights has identified that due to an unexpected larger number of Director retirements in 2018, the combined operation of the provisions referred to above will have the effect that some Directors will serve less than a three-year term before being required to retire.

Screenrights has also noted that in practice the continued operation of the current Articles of will, absent unexpected retirements, result in unintended future annual consequences, specifically that Directors who have only served for 2 years will be required to retire, subject to the outcome of agreement or drawing lots or agreement between affected Directors.

PROPOSED AMENDMENTS

To avoid the annual outcomes referred to above it is proposed that the Articles be simplified so that only the three-year term limit in Article 6.18 governs the retirement of Directors in the normal course.

Accordingly Articles 6.19, 6.21 and 6.22 relating to the one third rule would be deleted. Further, the words "*but must not be taken into account in determining Directors who are to retire on rotation*" in Article 6.11 would no longer be relevant and would be deleted.

This ensures that once elected a Director may serve a full three year term without facing re-election before the end of that term. Screenrights believes this in the best interests of the company as a whole.

The simplification of the Director term in office provisions as outlined above requires amendment of the Articles of Association. The proposed amendments are set out in Appendix D.

BOARD RECOMMENDATION – RESOLUTION 5

The Board unanimously support the resolution and recommends that the members vote in favour of it. Those members of the Board with voting entitlements will be voting in favour of the resolution.

Item 6 – Modification of Articles of Association – Director Term Limit

BACKGROUND

Under Screenrights' Articles of Association, a Director may not retain office for more than three calendar years or beyond the third annual Member's meeting following their election (whichever is longer) without submitting for re-election.

However, there is no limit on the number of times that a Director may seek re-election.

Following a Board review conducted early in 2019, the Board has considered the option of introducing a maximum term limit of three successive three year terms.

The Board has however noted that there may be rare circumstances in which it may be in the interests of the membership as a whole that a Director serve for one further term.

PROPOSED AMENDMENTS

It is proposed that a Director may only submit for re-election a maximum of two times, resulting in three consecutive three-year terms. Once this limit has been reached a Director may only submit for re-election one more time, but this first requires a request from the Chair (or a request from the Deputy Chair in the case of the Chair). Such a request may be made where the Board has a need for a specific skills and/or knowledge requirement. The request must be supported by the Directors with no more than one abstention or dissent.

A Director who has reached the term limit (three or four consecutive terms, as applicable) may not submit for re-election again or serve as a casual director or Alternate Director until the third annual Member's meeting following the Director's retirement.

Nothing prevents a Director nominating as a candidate for election an unlimited number of non-consecutive terms.

The introduction of a term limit as outlined above requires amendment of the Articles of Association. The proposed amendments are set out in Appendix E.

BOARD RECOMMENDATION - RESOLUTION 6

The Board unanimously support the resolution and recommends that the members vote in favour of it. Those members of the Board with voting entitlements will be voting in favour of the resolution.

Item 7 – Modification of Memorandum and Articles of Association – Modernisation and Clarity

BACKGROUND

Screenrights wishes to modernise and clarify the Memorandum and Articles of Association.

PROPOSED AMENDMENTS

It is proposed that in order to modernise the document:

- the name of the Memorandum and Articles of Association document is changed to the modern term “Constitution.”
- references to facsimile, telex and telegram have been removed.

It is proposed that Article 4.21 is clarified. It currently states that the Chair of a meeting must "if directed by the Members present adjourn" a general meeting. The mechanism is vague in its terms. Screenrights proposes to clarify that the direction must be by a majority of Members present.

The modernisation and clarification proposals outlined above require amendment of the Memorandum and Articles of Association. The proposed amendments are set out in Appendix F.

BOARD RECOMMENDATION – RESOLUTION 7

The Board unanimously support the resolution and recommends that the members vote in favour of it. Those members of the Board with voting entitlements will be voting in favour of the resolution.