

Brief to legal

This document contains all successful proposals relating to the constitutions and is to be provided to Moores legal for consideration, advice, and implementation into the document.

Workshop 1 - Purpose

Cultural Entity Proposed Purpose

Cultural Org Activities

Activities of the Operational Entity

Workshop 2 - Legal and Org structure

Relationship between entities

Hub structure

Workshop 3 - Board size and composition

Easy green lights

Board decision making powers (part 1)

Board election method (cultural entity)

Method for mid term vacancies

Indigenous Voice to Boards and/or committees

Workshop 4 - Committees

Finance

Membership Committee

Organising Committee

Workshop 5 - Membership

Provision for two types of membership

Membership Eligibility

Membership term length

Membership termination requires a breach of Code of Conduct

Workshop 6 - Director terms

Board position maximum term length

Explanation

Example 1: early joiner

Example 2: late joiner

Example 3: interim board

Method for mid term vacancies

Workshop 10 - Officer appointment

Officer appointment

Workshop 11 - Code of Conduct

There must be a Code of Conduct

Code of Conduct can only be changed at a general meeting

[Code of conduct](#)

[Workshop 12 - Decisions referred to members](#)

[Significant Purchase or Expenditure](#)

[Membership approval for sale of important assets](#)

[Other Successful Proposals](#)

[Charity status - cultural organisation](#)

[Institute of Community Directors compulsory membership for Board members](#)

[ACNC registration operational entity](#)

[Questions](#)

Workshop 1 - Purpose

[Workshop 1 Proposal 1 Topic 2.1]

Cultural Entity Proposed Purpose

The purposes of Sunburnt Arts are:

1. to advance culture and promote cultural activity which facilitates Burning Man principles, that:
 - 1.1. lift the human spirit; and
 - 1.2. address social problems;

as a means to inspire a sense of culture, community and cultural engagement;

2. to apply these purposes for the benefit of the wider community.

[W1P2 T2.1]

Cultural Org Activities

1. to co-operate with, affiliate and/or make grants to other artists, communities, social, ecological or creative collective groups having similar purposes in whole or in part;
 2. to conduct an official Burning Man regional event for the Australian Burning Man Community by:
 - a. establishing a wholly owned single member 'not for profit' subsidiary production entity, for
 - (i) conducting an official Burning Man regional event;
- for the benefit of Sunburnt Arts;

b. maintain ownership of the Intellectual Property relating to the official Burning Man regional event for the Australian Burning Man Community;

c. forming a licence agreement with the wholly owned single member 'not for profit' subsidiary production entity:

(i) for the use of any trademarked or other registered business names in its operation,

which are either held or licensed to Sunburnt Arts;

d. having a clear outline of financial arrangements, in any licence agreement, for the use of names, that:

(i) allow the independent and full operation of the official Burning Man regional event by the wholly owned single member 'not for profit' subsidiary production entity,

for the financial benefit of Sunburnt Arts;

[W1P3 T2.1]

Activities of the Operational Entity

1) To be a volunteer run Event.

2) To communicate and promote the Event as a gathering of participants, collaborating under the Ten Principles of the Burning Man Project.

3) To conduct all its activities in an environmentally sustainable manner.

4) To develop volunteer programs which provide workshops and training to the event's volunteer participants to ensure they are appropriately prepared for their role.

5) To prohibit anyone from becoming a remunerated employee of the organisation, other than engaging, by tender, certain roles by way of qualified licensed professionals for partnership services, that require specialist qualifications pertaining to participant and volunteer safety in the areas of security, medical, sanitation and administration of the organisation's finances and legal affairs.

6) To operate to a high standard, all production matters for the Event, including but not limited to: site related contracts, event insurance, public liability insurance, cancellation insurance, entry, safety, Art Installations, Temple, Effigy, communications about and promotion of the event and the conduct of the volunteer participants required to conduct

the event.

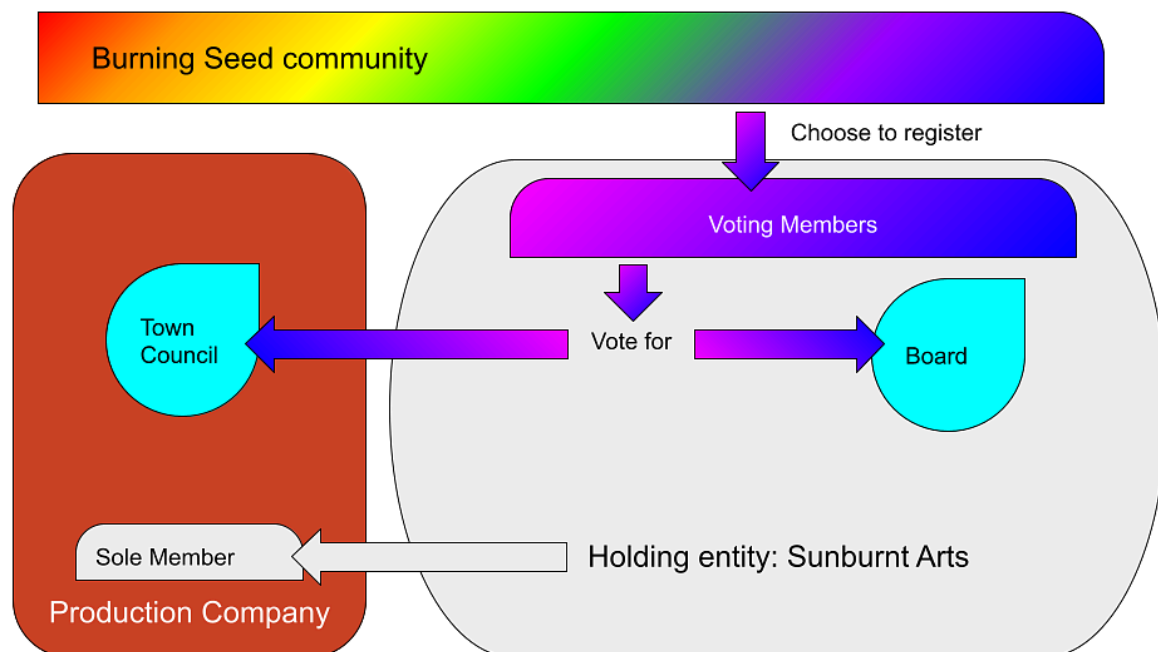
7) To maintain, manage and nurture ongoing relationships with site-specific stakeholders including but not limited to: traditional owners or custodians or relevant Aboriginal land council, law enforcement, forestry service, local council, fire services, NSW Health, ambulance and local community members.

Workshop 2 - Legal and Org structure

[W2P1 T1.1]

Relationship between entities

1. The Burning Seed community votes for separate boards of Sunburnt Arts and the Production Company:
 - 1.1. Voting Members of Sunburnt Arts vote for the board of Sunburnt Arts; and
 - 1.2. Voting Members of Sunburnt Arts* also vote for the board (Town Council) of the Operational entity.
2. For legal purposes, Sunburnt Arts is the sole member of the Operational entity.
3. Town Council administers and empowers a team to facilitate the Burning Seed event.



[W2P2 T1.2a]

Hub structure

This proposal is for a top level entity to act as a "hub" of sorts for the Burning Seed community. A subsidiary entity runs the annual Burning Seed event. Other subsidiaries could be created for other ventures and projects; or just committees - depending on the requirements of the project.

This structure provides the following features:

- Centralised community input, through voting for a board of directors
- Separation of liability for the annual event from the holding entity
- Separation of financial structure to help with NFP status
- Freedom for the operating entity to register with Forestry, contractors and other entities directly
- Freedom for the operating entity to structure itself in a way that best suits the needs of operation

The model has unanswered questions that may be relevant for discussion here, and others that should be instructed by experts. For example the relationship between the Holding and Operating entity; this relationship is key issues such as liability and tax.

Workshop 3 - Board size and composition

[W3P1 T3.1]

Easy green lights

1. The Board of the Operational Entity will be called Town Council
2. Members of the Board will be called Councillors
3. Voting Councillors will be registered as directors of the company
4. Voting Councillors should be appointed by a voting college* of members. What constitutes this voting college will be worked on in a separate workshop.
*terminology will be worked on in that workshop too.
5. The Board will consist of a minimum of 5 Voting Councillors, and a maximum of 7 total Councillors.
6. A Board is quorate when at least half of the Voting Councillors, and no less than three Voting Councillors are present.

[W3P2 T]

Board decision making powers (part 1)

All board members should have one vote. Decisions should require a quorate majority. The board should be able to agree to delegate decision making powers (and revoke them) wherever they choose. Decisions should require a quorate majority.

[W3P3 T8.1]

Board election method (cultural entity)

that the board be elected directly by members using a single transferable vote.

[W3P4 T]

Method for mid term vacancies

When the Board is declared open to nominations and there are more candidates than available places, an election is held. There should be clear instructions in the foundation documents regarding mid term vacancies of Board positions. If a mid term vacancy on either Peak Body comes about for any reason, they will be succeeded by the first runner up in the

most recent election; followed by the second, third or fourth until all vacancies are filled. Should the runners up decline the opportunity and the committee/board has not reached its minimum then a call out to the membership should be made to fill a casual vacancy until the next AGM.

[W3P5 T7.2]

Indigenous Voice to Boards and/or committees

That the new organisations will make provisions in the founding documents that ensure the traditional custodians owners of the land that the event is held upon have a voice on the peak decision making bodies (Board or Town Council respectively) if they so desire. Legal counsel should be sought about the most appropriate way to incorporate this intent. The Indigenous Liaison roles at Burning Seed for example should be carried over to the Operational entity and always be held by a person who identifies as an Aboriginal or Torres Strait Islander person. These liaisons should always be consulted in matters concerning the land on which the event is held and to be included in all decisions that may affect their cohort or the resources that they are stewards of. Potentially a chair should be made available on the Board in addition to the voting members that an indigenous liaison may occupy in the same tenure cycle as other Board members without the restrictions on successive terms. This position could be an open invitation without obligation of Board or Town Council duties or risk. If the person wishes to have a voting position on the Board they can, of course, nominate in the normal election cycle.

Workshop 4 - Committees

[W4P1 T0.6]

Finance

The constitution of the cultural organisation will include a requirement for a standing committee to manage the financial affairs of the organisation. The committee will report to the Board, specifically the Treasurer. A majority of Finance Committee members must have at least two years experience in treasury roles, accounting practice, financial planning or bookkeeping or hold a tertiary qualification in those areas. Members will be help to the same standards of eligibility as Board members (disqualification for convictions in any jurisdiction for crimes of a financial nature, undischarged bankrupts or those under a court ordered financial management plan).

[W4P2 T0.6]

Membership Committee

The constitution of the cultural organisation will include a requirement for a standing committee to manage the tasks relating to the members. The committee will manage membership applications and make recommendations to the Board about their acceptance. The membership committee will manage renewals, inquiries of a membership nature, and will ensure the register of active members is maintained. The committee will report to the Board. The Board at its sole discretion may accept or reject an application for membership once the committee has made its recommendation, but must give a reason for its decision.

The committee must notify the applicant in writing of entry in the register; and the applicant for membership becomes entitled to exercise the rights of membership when: (i) the members name appears in the register of members, and (ii) the member has paid to the company the relevant fees and amounts. If the Board rejects an application, the committee must ensure the whole of the money lodged in respect of the application must be refunded to the applicant without interest.

[W4P3 T0.6]

Organising Committee

The Cultural organisation will have a standing committee known as the Organising Committee. The Organising committee is responsible for planning and organising meetings in accordance with the terms of the constitution. It will ensure that all compulsory meetings are scheduled and that the correct notice is delivered to members. The committee will prepare documentation for these meetings and will manage the outputs during meetings - agendas, minutes, resolutions etc. The committee will also arrange meetings between the Board and other committees, sub-committees, teams or stakeholder groups towards the efficient and compliant operation of the organisation.

Workshop 5 - Membership

[W5P1 T9.1.3]

Provision for two types of membership

that there be two membership categories at inception.

**type names can be changed to reflect culture and are listed as working titles for clarity.*

The proposal is to establish:

Voting Members*

A category that includes at the least, voting rights and eligibility to nominate for Committee roles including Board and Town Council. There will be higher benchmarks of activity to maintain this type of membership at the time of renewal.

Associate Members*

A category to capture a much broader base of the community who are interested in the activities of the organisations and would like to be included in communications, but who are not prepared to attend meetings that depend on quorum, or to cast votes on matters outlined in the Constitution, or to run for officer roles. This type will have a simple benchmark to confirm active member status at the time of renewal.

Rationale

If Voting members are expected to vote for (or nominate as) decision-making representatives, then a degree of involvement/engagement/enculturation/participation is very important.

Associate members are a base of Radically Included participants who have applied to be entered on the member register but mostly just to be notified through comms channels and invited in calls to action where appropriate.

Notes:

- the term "membership" here does not refer to legal/corporate relationship between the legal structures, but to the relationship people have with the entities.
- members of the cultural entity will have access to the operational entity *automatically* as soon as they have a cultural org membership
- the aim is to make it simple for people to engage, but to reflect the most common differences between levels of engagement in organisational matters.
- Burners shouldn't have to research legal structures, relationships and NSW corporate law in order to participate in the structures we're making.

[W5P2 T9.1.1]

Membership Eligibility

The more involved of the categories (eg, the category with voting power) requires an applicant to demonstrate:

- that they have attended Burning Seed (the Event) as a participant, at least once, with the most recent occasion in the last five physical events, or
- that they have provided a Principled Contribution towards the Event's coordination and conduct by having volunteered and utilised a (member_name)@burningseed.com email address towards the Event's co-ordination.

[W5P3 T9.1.4]

Membership term length

That a membership expires unless renewed after one year from the previous renewal or initial grant of application.

Note:

- Renewal doesn't require the whole application process - could be a simple hyperlink in an email notification.
- Recommend that the org also include an option in the application process "I have been a member previously" which saves previous members from having to redo the application process (though to be honest I don't expect the application process to be difficult anyway).

[W5P4 T9.1.4]

Membership termination requires a breach of Code of Conduct

a person's membership cannot be terminated without compliance with the procedure set out in the Code of Conduct.

Workshop 6 - Director terms

[W6P1 T6.1,T6.2]

Board position maximum term length

1. the Entity must complete an election before December 20 of the next calendar year
 - 1.1. if a person has held a position on the Board for the 2 previous full calendar years, or
 - 1.2. by consensus of more than 50% of the registered members
2. a Board membership expires upon completion of the first election after the position has been held for 2 full calendar years

Explanation

I'm going to explain this badly, so please keep that in mind and ask any questions it raises. Also, I refer to the parts as "clause" but that's just writing habit - the lawyers will take the intention and write it in properly.

After a bunch of wording and work-shopping, I found that it was efficient to break the mechanism into two parts; a trigger for election, and a mechanism for handling who is up for election.

The system:

- makes it easy to keep track of election years (every third year)
- strikes a balance between minimum and maximum terms (2 and 4 years respectively) which matches the AFR (average to 3 depending on the specific election dates)
- gives the board flexibility on exactly when to run the election, but doesn't allow it too close to the end of year holiday period when cultural events are happening
- contains provision for the first election and transition from Interim board to officially elected Board
- contains provision for filling empty positions without penalizing the new board member with a significantly shorter term
- allows the Entity to run election whenever needed - it's not limited to once per 3 years - but also gives people the security to know that their position won't expire until they've had at least two years in the role. Of course, board members can quit at any time too.

Example 1: early joiner

If an election is run in January 2000 but one of the elected Board members quits in February, their replacement has only had one month less of a term than the rest of the Board. In this theoretical scenario we want to be able to fill a seat rather than leave it empty for 2.9 years. The replacement is given the position (we'll have a separate thread on how this is done).

The Entity is obligated to have an election in 2003 under cause 1.1. All board members were elected in 2000, so all positions will expire on the completion of this election. This is fair because the early joiner has been there for a vast majority of the 3 year period, and the limits are maximums not minimums.

Example 2: late joiner

A election is run in January 2000 but one of the elected members quits in 2002 and their replacement is desperately needed, so we don't want to wait out the remaining. The replacement is given the position (we'll have a separate thread on how this is done).

Again the Entity is obligated to have an election in 2003. In this scenario the late joiner has only held the position for a couple of weeks. No one would run for an interim position if they were at risk of being voted out again weeks later, so we don't want their position to expire in the '03 election. Clause 2 means that only the seats of people who have had the position for 2 full years are up for election.

Example 3: interim board

In order to register the Entity, we have to put down the names of Board members. We can't run an official election for them because the constitution is not binding until *after* registration, but we also can't register until we have the names.

Therefore there needs to be an interim board whose sole purpose is to organize and run the first election. We don't want to wait 3 years for them to be forced do so under clause 1.1, and to make sure that unlikely event doesn't occur, clause 1.2 allows the members to trigger the first election immediately.

Method for mid term vacancies

When the Board is declared open to nominations and there are more candidates than available places, an election is held. There should be clear instructions in the foundation documents regarding mid term vacancies of Board positions. If a mid term vacancy on either Peak Body comes about for any reason, they will be succeeded by the first runner up in the most recent election; followed by the second, third or fourth until all vacancies are filled. Should the runners up decline the opportunity and the committee/board has not reached its minimum then a call out to the membership should be made to fill a casual vacancy until the next AGM.

Workshop 10 - Officer appointment

[W10P1 T8.2]

Officer appointment

the Board appoints whoever they like to be the necessary officers of the company.

Workshop 11 - Code of Conduct

[W11P1 T9.1.5]

There must be a Code of Conduct

1. that the Entity be required to have an official Code of Conduct, and
2. that the Code of Conduct be available for any member to access at any time

[W11P2 T9.1.5.1]

Code of Conduct can only be changed at a general meeting

the Code of Conduct is only changed if a majority of members present at a General Meeting vote in favour of the change.

[W11P3 T9.1.5]

Code of conduct

The new entities will maintain a Code of Conduct that reflects the Ten Principles of Burning Man and would be considered by a reasonable person to be fair in its dealings with members. The Code of Conduct, like the [attached draft](#) example (prepared by Leanna Pugliese and Susanne Parris and sub edited by Madeline Fountain) will ensure that members know what is expected of them and that disputes or conflicts that lead to any kind of disciplinary or conflict resolution processes are clearly defined. The Code of Conduct may be an appendix to the Constitution. Any move by the Boards to expel a member on the grounds of behaviour must be justified by documented breaches of the Code of Conduct. Members must have a right of reply and an independent appeals process defined in the Constitution if CoC breaches are invoked as justification of removal from the member register. (This does not include members being removed for inactivity or death).

Workshop 12 - Decisions referred to members

[W12P1 T10.1]

Significant Purchase or Expenditure

a simple majority of members at a quorate general meeting must approve expenditure on a single account category or purchases of capital items that are worth more than 25% of the entity's balance sheet and/or net revenue from the year before.

[W12P2 T10.1]

Membership approval for sale of important assets

1. An Important Asset is an asset that:
 - 1.1. makes up more than 10% of the net worth of the Entity's worth, or

- 1.2. is an asset that the Entity cannot complete its Activities without.
2. An Important Asset cannot be sold without member approval.

Other Successful Proposals

[W14P1 T11.1]

Charity status - cultural organisation

The Cultural Organisation is to be registered by the Restructure Committee with the Australian Charities and Not for Profit Commission. All clauses required by the ACNC for the constitution will be included in the brief to legal team.

[W14P2 T]

Institute of Community Directors compulsory membership for Board members

Both organisations will maintain group membership plans with the Institute of Community Directors. Board members of both entities must be registered as members under these plans.

[W14P3 T11.3]

ACNC registration operational entity

The operational entity to be registered with the Australian Commission of Charities and Not for profits and all necessary clauses to be included in the brief to legal for constitution drafting.

Questions

Section	Question
[W1P1 T2.1] [W1P2 T2.1]	Are these purposes good for charity status?
[W14P3 T11.3]	Does the operating org require ACNC registration?
[W14P3 T11.1&T11.3]	Does the cultural org have to be registered with ASIC before its subsidiary operational org is registered with ASIC?
[W1P2 T2.1]	What are the consequences for failing to undertake an activity? What are the consequences for undertaking an activity not listed?
[W2P1 T1.1]	Are there any dangers or surprises likely to arise with our structure planned?
[W3P2 T]	How do we protect against the company freezing with a

	lack of quorum for example?
[W3P5 T7.2]	Is this protected from the Discrimination Act?
[W4P1 T0.6]	Are we required to enshrine committees in the constitution?
[W6P1 T6.1,T6.2]	How feasible and practical is the election plan? Are there any potential dangers or problems to provision for?