

MUSIC COUNCIL OF AUSTRALIA PTY. LIMITED

(ABN 85 070 619 608)

CONSTITUTION

1. 1) In this Constitution:

"Act" means the *Corporations Act 2001* (Cth);

"Board" means the Director or Directors for the time being of the Company or any one or more of them as has or have authority to act for the Company;

"Company" means the company named above whatever the company's name may be from time to time;

"Constitution" means this constitution as amended from time to time and any reference to a clause by number is a reference to the clause of that number in this constitution;

"Council" means the council of the Company consisting of the Members from time to time;

"Director" means a director for the time being of the Company;

"Representative Member" means a natural person or an organisation designated by the Board from time to time as a Representative Member in accordance with the procedure described in the Schedule.

"Seal" means the common seal of the Company and includes any official seal of the Company;

"Secretary" means any person appointed to perform the duties of a secretary of the Company; and

"Shareholder" means a member of the Company as the term "member" is defined in the Act. [Note: The word "Member" as used in this Constitution has a different meaning from the meaning given to that word in the Act]

2)

- 3) Except so far as the contrary intention appears in this Constitution, an expression that deals with a matter dealt with by a particular provision of the Act, has the same meaning as in that provision of the Act.

Replaceable Rules

2. The replaceable rules contained in the Act are hereby displaced and shall not apply to the Company but instead the following and clause 1 above shall be the constitution of the Company.

Proprietary Company

3. The Company is a proprietary company and accordingly:
- 1) the Company must have no more than 50 non-employee Shareholders (counting joint holders of a particular parcel of shares as one person); and
 - 2) the Company must not engage in any activity that would require disclosure to investors under Chapter 6D of the Act.

Powers and Authorisation

4. The Company has the rights, powers, privileges and legal capacity of a natural person and a body corporate.
5. The Company may do all such acts matters and things which are authorised or permitted by the Act and at such times as the Company thinks fit.
6. Where the Act authorises or permits a company to do any thing if so authorised by its constitution, the Company is authorised by this clause to do that thing.
7. Unless otherwise determined by special resolution of the Board, all of the shares in the Company shall be owned by the Company itself with each Share held by the Company on trust for the Directors of the Company from time to time as joint beneficial owners.
8. The objects of the Company are set out in Schedule 2 to this Constitution and the Directors will use their respective reasonable and lawful endeavours to ensure that the affairs of the Company are conducted so as to advance the objects of the Company to the greatest extent practicable.

Role of Directors in their capacity as beneficial owners of the Shares in the Company

9. On the retirement of a Director of the Company, the interest of that Director as joint beneficial owner of the shares of the Company shall be transferred to the other directors then holding office including (but subject to clause 10) any incoming director appointed to replace the deceased or retiring director.
10. Unless otherwise determined by a majority vote of the Directors in a particular case or cases, the appointment of any person as a new Director of the Company (either to replace a retiring or deceased Director or otherwise) shall be conditional, and shall take effect, on that person executing a document reasonably acceptable to the Board under which the person becomes a joint beneficial owner of the shares in the Company together with the other Directors then holding office.

Alteration of Capital

11. The Company may by resolution:
 - (a) ___increase its authorised share capital by the creation of new shares of such amount as is specified in the resolution;
 - (b) consolidate and divide all or any of its authorised share capital into shares of larger amount than its existing shares.
12. Subject to the Act, the Company may, by special resolution, reduce its share capital, any capital redemption reserve fund or any share premium account.

General Meetings

13. Any two (2) Directors may whenever they think fit convene a general meeting.
14. (1) A notice of general meeting shall specify the place, the day and the hour of meeting and, except as provided by sub regulation (2), shall state the general nature of the business to be transacted at the meeting. Not less than twenty-one (21) day's notice of a general

meeting shall be given and in the case of an annual general meeting the date for such meeting shall be advised to Representative Members and the Board not less than eight (8) weeks before such date.

- (2) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the consideration of accounts and the reports of the Directors and auditors.
- (3) The names of the Directors retiring and being available for re-election shall be given in the notice of meeting.
- (4) A Representative Member may give notice of business in addition to any business decided upon by the Directors to be transacted or considered at an annual general meeting provided such Representative Member gives written notice of the specific business not less than six (6) weeks before such general meeting. Notwithstanding the provisions of this sub-regulation business may be transacted or considered at a general meeting of which such prior notice has not been given if a vote of not less than two-thirds of those present in person and by proxy so approve.

Proceedings at General Meetings

15. (1) At general meetings of the Company, the Representative Members shall be entitled to vote on each resolution. The votes of the Representative Members will not be binding, but the Directors will cause any resolution put to a general meeting and carried by majority vote of the Representative Members to be carried out provided that:
 - (a) a majority of the Directors, acting reasonably, determines at the next Board meeting after the general meeting that to carry out the resolution would not be in the best interest of the Company; and
 - (b) no Director will be required at a Board meeting to vote to carry out the resolution if he or she reasonably determines that to do so would conflict with his or her legal obligations as a Director.
 - (2) No business shall be transacted at any general meeting unless a quorum of Representative Members is present at the time when the meeting proceeds to business. Quorum for a general meeting shall be twelve (12) Representative Members present in person or by proxy.
 - (3) For the purposes of determining whether a quorum is present, a person attending as a proxy shall be deemed to be a Representative Member.
16. If a quorum is not present within half an hour from the time appointed for the meeting:
 - (a) where the meeting was convened upon the requisition of Representative Members - the meeting shall be dissolved; or
 - (b) in any other case:
 - (i) 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
 - (ii) if at the adjourned a quorum is not present within half an hour from the time appointed for the meeting;
 - (a) 6 Representative Members constitute a quorum; or
 - (b) where 6 Representative Members are not present - the meeting shall be dissolved.
17. (1) After each annual general meeting the Board shall elect from the Directors the following officers (a) a chairperson, (b) a deputy chairperson, (c) a secretary and (d) a treasurer.

If between annual meetings any such officer ceases for any reason to continue in such appointment the Directors may fill such position until the next annual general meeting.

- (2) Where a general meeting is held and the chairperson or deputy chairperson are not present within fifteen (15) minutes after the time appointed for the holding of the meeting the Representative Members present shall elect a Shareholder to be chairperson of the meeting.
18. (1) The chairperson may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but 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 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 sub regulation (2), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
19. (1) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
 - (a) by the chairperson;
 - (b) by at least three (3) Representative Members present in person or by proxy;
 - (c) but the election of Directors shall be by secret ballot.
 - (2) Unless a poll is so demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
 - (3) The demand for a poll may be withdrawn.
20. If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.
21. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, in addition to his deliberative vote (if any), has a casting vote:
22. On a show of hands or a poll each Representative Member shall have one vote.
23. (1) An instrument appointing a proxy shall be in writing under the hand of the appointer.
 - (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 poll.
 - (4) (4) An instrument appointing a proxy shall be in the following form or in a form that is as similar to the following form as the circumstances allow:

[Name of Company]

I/We, _____, of _____, being a Representative Member/Members of the abovenamed company, hereby appoint of _____ or, if absent, _____ of _____ as my/our proxy to vote for me/us on my/our behalf at the *annual general / * general meeting of the company to be held on the _____ day of _____ 20... and at any adjournment of that meeting.

This form is to be used *in favour of / * against the resolution

Signed this

day of

19

Strike out whichever is not desired.

To be inserted if desired.

24. A vote given in accordance with the terms of an instrument of proxy or a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocations of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given, if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.
25.
 - (1) There shall be nine (9) Directors each appointed for three (3) years subject to rotation.
 - (2) The Company may in a general meeting increase or reduce the number of Directors and determine in what rotation the increased or reduced number is to go out of office.
 - (3) So long as there are nine (9) Directors one-third of the Directors or the nearest to one-third shall retire from office at the annual general meeting. If the terms of more than one-third shall expire at any annual general meeting then those whose terms expire shall then retire.
 - (4) A retiring Director shall be eligible for re-election.
 - (5) The order in which Directors retire at an annual general meeting shall be as decided at the first annual general meeting of the Company to establish the system of rotation.
26.
 - (1) The Company shall at the meeting at which a Director retires fill the vacated office by electing a person to that office.
 - (2) If a vacated office is not so filled, the retiring Director if offering for re-election be deemed to have been re-elected unless:
 - (a) it is expressly resolved not to fill the vacated office; or
 - (b) a resolution for the re-election of that Director is put and lost.
27.
 - (1) The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors does not at any time exceed the number determined in accordance with these regulations.
 - (2) Any Director so appointed holds office only until the next following annual general meeting and is then eligible for re-election but shall not be taken into account in determining the Directors who are to retire by rotation at that meeting.
28.
 - (1) The Company may by resolution remove any Director before the expiration of his period of office, and may by resolution appoint another person in his stead.
 - (2) The person so appointed is subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected a Director.
29. The Directors may subject to a resolution of the Company be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the business of the Company.
30. The share qualification for Directors is one share, the holding of a share by a nominee shall be taken to be the holding of a share by a Director.

31. 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:
- (a) 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;
 - (b) resigns his office by notice in writing to the Company;
 - (c) is absent without the consent of the Directors from two successive meetings of the Directors.

Powers and Duties of Directors

32. (1) Subject to the Act and to any other provision of these regulations, 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 these regulations, required to be exercised by the Company in general meeting.
- (2) Without limiting the generality of sub regulation (1), the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.
33. (1) The Directors may, by power of attorney, appoint any person or persons 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.
34. 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, endorse or otherwise executed, as the case may be, by any two (2) Directors or in such other manner as the Directors determine.

Proceedings of Directors

35. (1) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
36. (2) Two Directors at any time, and a secretary shall on the requisition of such Directors convene a meeting of the Directors.
37. (1) Subject to these regulations, questions arising at a meeting of Directors shall be decided by a majority of votes of Directors present and voting and any such division shall for all purposes be deemed a decision of the Directors.
- (2) In case of an equality of votes, the chairperson of the meeting, in addition to his deliberative vote (if any), has a casting vote.
38. A Director shall not vote in respect of any contract or proposed contract with the Company in which that Director is in any way, whether directly or indirectly, interested or in respect of any matter arising out of such a contract or proposed contract and, if in voting contravention of this sub regulation such vote shall not be counted.
39. At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is such number as is determined by the Directors and, unless so determined is four (4).
40. 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 general meeting of the Company.

41. (1) The chairperson or if absent the deputy-chairperson elected at the annual meeting shall act as such for all meetings of the Directors.
- (2) Where a meeting of Directors is held and the chairperson or deputy-chairperson is not present within ten (10) minutes after the time appointed for the holding of the meeting the Directors present shall elect one of their number to be a chairperson of the meeting.
42. (1) The Directors may delegate any of their powers to a committee or committees consisting of such of their number or such of their number and other persons whether members of the Company or not (and in any case with power to co-opt 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 chairperson of their meetings and regulate their proceedings and business as they see fit.
- (4) A committee may meet and adjourn as it thinks proper.
- (5) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.
- (6) In the case of an equality of votes, the chairperson, in addition to a deliberative vote (if any), has a casting vote.
43. (1) If the Directors 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 of 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.
- (2) For the purposes of sub regulation (1), two (2) 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 documents.
- (3) A reference in sub regulation (1) to all the Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.
44. 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 qualified, 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.
45. Audio conference
- (1) Without limiting the discretion of the Board to regulate its meetings the Board may confer using any technology consented to by all the Directors, including without limitation, by landline, mobile or satellite telephone, wi-fi audio or audio-visual communication, closed circuit television or other electronic means of contemporaneous audio or audio-visual communication (**Audio Conference**).
- (2) A resolution passed at an Audio Conference shall be taken to have been passed at a meeting of the Board held on the day on which and at the time at which the Audio Conference was held.
- (3) The provisions of this Constitution relating to proceedings of the Board apply so far as they are capable of application to an Audio Conference.

Managing Director

46. (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 a particular case, may revoke any such appointment.

- (2) A Director so appointed shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of Directors; such appointment automatically terminates if the appointor ceases to be a Director.
47. (1) The Directors may, upon such terms and conditions and with such restrictions 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.

Seal

48. (1) The Directors shall provide for the safe custody of the seal.
- (2) The seals 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, and every document to which the seal is affixed shall be signed by a Director and be countersigned by another Director, a secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

Inspection of Records

49. 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 general meeting,

Notices

50. (1) A notice may be given by the Company to any Representative Member either by serving it personally or by sending it by post, facsimile or email at the address as shown in the register of members or the address supplied to the company for the giving of notices to that member.
- (2) Where a notice is sent by post, service of the notice is taken:
- (a) (to be effected by properly addressing prepaying and posting a letter containing the notice; and
- (b) to have been effected at the time at which the letter would be delivered in the ordinary course of post.
- (3) Where a notice is sent by facsimile or electronic mail, service is taken:
- (a) to be effected by correctly sending a facsimile or electronic version of the notice; and
- (b) to have been effected at the time that the Company sent the facsimile or electronic mail.

- (3) The inclusion of any notice referred to in this clause 50 or pursuant to any provision of this Constitution may be given by inclusion in a bulletin or other publication issued to Representative Members from time to time.
51. (1) Notice of every general meeting shall be given in the manner authorised by clause 50 to:
- (a) every Representative Member; and
 - (b) the auditor for the time being of the Company,
- (2) No other person is entitled to receive notice of general meetings.
52. (1) If upon the winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to or distributed among the members of the Company but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Company and which shall prohibit the distribution of its or their income and property among its or their members PROVIDED THAT such institution or institutions have deductible gift recipient status.
- (2) Further to clause 52(1), should there be among the assets of the Company, musical instruments donated for the purpose of loan to musicians, those instruments
- a) shall be the last assets sold to meet debts of the Company
 - b) if not sold to meet the debts of the Company, shall be given or transferred to an eligible institution(s) which undertake(s) to continue their use for that purpose.

Indemnity

53. Every officer, auditor or agent of the Company shall be indemnified out of the property of the Company against any liability incurred by him in his capacity as officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is under the Act granted to him by the Court.

SCHEDULE 1

Music Australia Council

Purpose of the Council

The Council is a national representative body established to advance, represent and further the interests of music in Australia.

The Council will be representative of the various fields comprising all forms of music in Australia.

The Council will embrace the total span of music activity with comprehensive membership drawn from both Organisations and Individuals.

Such activity can include, but not be limited to: composition, performance, management, dissemination, presentation, recording, publishing, copyright, education, experimentation, and research.

The Council's role is to advise and assist the Directors to implement the Objects of the Company.

By pursuing these Objects the Council seeks to establish the Company as the peak umbrella body for music in Australia.

Councillors will be appointed for renewable terms of 3 years.

The Council will meet at least annually.

Structure, composition and powers of the Council

- There will be a Council of Music Australia.
- Councillors will be appointed by invitation of the Board subject to criteria set out below
- Councillors will be drawn from the ranks of Representative members, and from other individuals to provide balanced Council representative of Australian music.
- Generally a representative member will be entitled to provide a nominee to be appointed as Councillor. Where such appointment may duplicate a specialised field of music, or in the opinion of the Board not warrant representation, the Board will exercise its discretion to achieve a balance of Councillors representative of Australian music.
- Councillors will be entitled to vote at general meetings of the Company, including at the annual general meeting and the Board will adopt the vote of the Councillors on each resolution unless:
 - the Board, acting reasonably, forms the view that to do so is not in the Company's best interests in respect of a particular resolution or resolutions, or
 - any individual Director reasonably determines that to follow the dictate of the Councillors would conflict with his or her legal obligations as a Director.
- There will be two categories of members:
 - "**Representative Members**" (who will have voting rights at general meetings of the Company); and
 - Members (who will not have voting rights)
- Within these two categories are two membership types: Organisational and Individual.

Representative Members – Organisational

- Organisations will be permitted to apply for representative membership if, in the opinion of the Board of Music Council of Australia Pty Ltd, they meet the following criteria:
 - Primary purpose is to represent a national music constituency as a recognised representative association or special purpose entity or provide a national music program or service and to advance the interests of their members

- Are generally not for profit
- Purpose and activities are consistent with Music Council of Australia Pty Ltd objects
- Membership of each applicant organisation will be subject to Board approval
- Current organisational members of Council will be ratified as continuing Representative Organisational Members unless the Board determines otherwise in particular cases
- Each will propose a nominee as their ‘Councillor’ for ratification by the Board where such representation is warranted
- Representative Members - Organisational will have voting rights at general meetings of the Company, including the annual general meeting.

Representative Members – Individual

- Individuals who are appointed by the Board to represent a specified field of music
- Will assume role of Councillor for a dedicated music constituency (eg: composition, screen music, etc;)
- Fields of music without a representative national music association may be prioritised
- Appointment will be ratified by a vote at the annual general meeting;
- Representative Members – Individual will be entitled to vote at general meetings of the Company, including the annual general meeting.

Members – Organisational

- Primary purpose is to either:
 - Deliver a music service or program nationally or at a State or Territory level or
 - run an Australian company whose main activity is as a music business
- Will not be entitled to vote at general meetings of the Company, including the annual general meeting.

Members – Individual

- Individuals whom the Board of the Company determines are supportive of Music Australia’s objects
- Will not be entitled to vote at General Meetings of the Company.

SCHEDULE 2

Objects of the Company

1. To foster Australian musical life and support all forms of music in Australia
2. To bring together key organisations and individuals, and foster communication and cooperation between the various elements of the music sector across the country
3. To promote and raise public awareness of the value and contribution of music and musicians to individuals, to education, and to the cultural and economic life of the nation
4. To provide information and resources on music activity in Australia
5. To provide selected services to the Australian public and to the music sector
6. To foster effective development of musical activity by developing policies and contributing to and supporting policy development and implementation
7. To advocate to government, funding bodies and other decision makers policies and actions which will benefit Australian musical life