

Approved by Consumer  
Affairs Victoria, XXXXX

# Melbourne Youth Music Inc. Constitution

May 2016



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## PART 1—PRELIMINARY

### 1 Name

The name of the incorporated association is Melbourne Youth Music Incorporated, trading as Melbourne Youth Orchestras

### 2 Purposes

The purposes of the association are to promote music performance and music education among young people in Victoria and the broader community through and without limitation: -

- (a) a comprehensive music education and training program that:
  - i. increases youth involvement in music and more broadly enhances an appreciation of the arts;
  - ii. encourages personal development and excellence, giving participants a valuable life experience; and
  - iii. promotes the status of music education in Victoria by enhancing the quality of musicianship and music in schools and the community; ensuring access, equity, engagement and participation for all students, through the provision of specialist educators, facilities, equipment and targeted support.
- (b) sharing of resources and information and the undertaking of collaborative projects and programs;
- (c) productive partnerships and networks with music organisations, musicians, schools, other education facilities, the arts sector, and the community; and
- (d) other activity that promotes music collaboration and music education for young people.

### 3 Financial year

The financial year of the Association is each period of 12 months ending on 31 December.

### 4 Definitions

In these Rules—

***absolute majority*** of the Board, means a majority of the Board members currently holding office and entitled to vote at the time (as distinct from a majority of Board members present at a Board meeting);

***associate member*** means a member referred to in rule 14(1);

***Chairperson*** of a general meeting or Board meeting, means the person chairing the meeting as required under rule 43;

**Board** means the Board having management, oversight and monitoring of the business of the Association including governance duties and delegable authority;

**Board meeting** means a meeting of the Board held in accordance with these Rules;

**Board member** means a member of the Board elected or appointed under Part 5 Division 3;

**Chief Executive Officer (CEO)** means the appointed CEO of the Association.

**Decision maker** is given the meaning referred to in rule 20

**financial year** means the 12-month period specified in rule 3;

**general meeting** means a general meeting of the members of the Association convened in accordance with Part 4 and includes an annual general meeting, and a special general meeting;

**ITAA 97** the Income Tax Assessment Act 1997 (Cth);

**member** means a member of the Association, which includes a parent or legal guardian of a student of the Association who is under the age of 18;

**member entitled to vote** means a member who under rule 13(2) is entitled to vote at a general meeting;

**Public Fund** means any public fund established and managed in accordance with these Rules;

**special resolution** means a resolution that requires not less than three-quarters of the members voting at a general meeting, whether in person or by proxy, to vote in favour of the resolution;

**the Act** means the **Associations Incorporation Reform Act 2012** and includes any regulations made under that Act;

**the Registrar** means the Registrar of Incorporated Associations.

## PART 2—POWERS OF ASSOCIATION

### 5 Powers of Association

- (1) Subject to the Act, the Association has power to do all things incidental or conducive to achieve its purposes.
- (2) Without limiting sub rule (1), the Association may—
  - (a) acquire, hold, lease, hire and dispose of real or personal property;
  - (b) open and operate accounts with financial institutions;
  - (c) invest its money in any security in which trust monies may lawfully be invested;
  - (d) raise and borrow money on any terms and in any manner as it thinks fit;
  - (e) secure the repayment of money raised or borrowed, or the payment of a debt or liability;
  - (f) appoint agents to transact business on its behalf;
  - (g) enter into any other contract it considers necessary or desirable;
  - (h) appoint patrons to the Association;
  - (i) receive grants and donations and set up such public or other funds and structures as are necessary to meet the terms of such grants or donations or to achieve any payer tax deductibility status

- related thereto; and
- (j) undertake any necessary business function as would apply, including determination or amendment of trading name, Australian Securities and Investments Commission (ASIC) compliance and regulation, Australian Charities and Not-for-profit Commission (ACNC) compliance and regulation, Australian Tax Office (ATO) compliance and **regulation and any other business, corporate or other** obligation of an ordinary business in accordance with law.
- (3) The Association may only exercise its powers and use its income and assets (including any surplus) for its purposes.

## **6 Not for profit organisation**

- (1) The Association must not distribute any surplus, income or assets directly or indirectly to its members.
- (2) Sub rule (1) does not prevent the Association from paying a member or Board member—
- (a) reimbursement for expenses properly incurred by the member; or
- (b) for goods or services provided by the member —
- if this is done in good faith on terms no more favourable than if the member was not a member.
- (3) Any payment to a Board member must be approved by the Board.
- (4) This rule 6 does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any Board member to the extent permitted by law and these Rules.

## **PART 3—MEMBERS, DISCIPLINARY PROCEDURES AND GRIEVANCES**

### **Division 1—Membership**

## **7 Minimum number of members**

The Association must have at least 5 members.

- (1) The members are:
- (a) The members under the existing rules at the date of the adoption of these Rules; and
- (b) The members who are admitted to membership in accordance with **Rules 8-18**.

## **8 Who is eligible to be a member**

A person is eligible to be a member of the Association if:

- (a) they are a member of the Association upon adoption of these Rules; and
- (b) members who are eligible for membership in accordance with these Rules.

## **9 Application for membership**

Every application for membership of the Association, as a Member or an Associate, must apply in the form and manner decided by the Board.

## **10 Consideration of application**

- (1) As soon as practicable after an application for membership is received, the Board or a delegate approved by the Board must consider the application and decide whether to accept or reject the application and decide the appropriate class of membership.
- (2) If the Board or its delegate rejects the application, it must return any money accompanying the application to the applicant.
- (3) No reason need be given for the rejection of an application nor for the decision as to the appropriate class of membership.

## **11 New membership**

- (1) If an application for membership is approved by the Board or its delegate, the Secretary must, as soon as practicable, enter the name and address of the new member, and the date of becoming a member, in the register of members.
- (2) A person becomes a member of the Association and, subject to Rule 13(2), is entitled to exercise his or her rights of membership from the date, whichever is the later, on which –
  - (a) the Board or its delegate approves the person's membership; or
  - (b) the person pays the joining fee (if any).

## **12 Annual membership and fee on joining**

- (1) The Board must notify all persons entered on the register of members of the amount and time for payment of the annual membership fee (if any). Any changes to the membership fee will be determined by the Board.
- (2) In order for a member to be eligible for a renewal of their membership, the Board (or its delegate) may require confirmation or further information that a member still meets the requirements for the class of membership.
- (3) The Board may determine that a lower annual membership (if any) is payable by associate members.
- (4) The Board may set out reasonable timeframes for any notification of late payments, suspension of membership rights (including the right to vote), and cessation of membership where the annual subscription fee is not received by the due date.

## **13 General rights of members**

- (1) A member of the Association who is entitled to vote has the right –
  - (a) to receive notice of general meetings and of proposed special resolutions in the manner and time prescribed by these Rules; and
  - (b) to submit items of business for consideration at a general meeting; and
  - (c) to attend and be heard at general meetings; and
  - (d) to vote at a general meeting; and
  - (e) to have access to the minutes of general meetings and other documents of the Association as provided under Rule 71; and

- (f) to inspect the register of members.
- (2) A member is entitled to vote if—
  - (a) the member is a member other than an associate member; and
  - (b) more than 10 business days have passed since he or she became a member of the Association; and
  - (c) the member's membership rights are not suspended for any reason.

#### **14 Associate members**

- (1) Associate members of the Association include—
  - (a) any members under the age of 18 years; and
  - (b) any other category of member as determined by special resolution at a general meeting.
- (2) An associate member must not vote but may have other rights as determined by the Board or by resolution at a general meeting.

#### **15 Rights not transferable**

Rights of a member are not transferable and end when membership ceases.

#### **16 Ceasing membership**

- (1) A person's membership ceases on resignation, expulsion or death.
- (2) If a person ceases to be a member of the Association, the Secretary must, as soon as practicable, enter the date the person ceased to be a member in the register of members.

#### **17 Resigning as a member**

- (1) A member may resign by giving one month's notice in writing to the Association.
- (2) A member is taken to have resigned if—
  - (a) the member or member's child is not successful in being offered a place in the Association's programs through the normal audition and selection process;
  - (b) the member's annual subscription is more than 12 months in arrears; or
  - (c) where no annual subscription is payable—
    - a. the Secretary has made a written request to the member to confirm that he or she wishes to remain a member; and
    - b. the member has not, within 3 months after receiving that request, confirmed in writing that he or she wishes to remain a member.
- (3) In the event a member or a member's child withdraws from a program of the Association or is expelled from any of the Association's programs, that member will be deemed to have resigned as a member(s) of the Association.
- (4) The Board at its discretion may reimburse any pro rata membership fee to the member. The member otherwise forfeits their membership fee.



## **18 Register of members**

- (1) The Secretary must keep and maintain a register of members that includes—
  - (a) for each current member—
    - a. the member's name;
    - b. the address for notice last given by the member;
    - c. the date of becoming a member;
    - d. if the member is an associate member, or other form of member, a note to that effect; and
    - e. any other information determined by the Board.
  - (b) for each former member, the date of ceasing to be a member.
- (2) Any member may, at a reasonable time and free of charge, inspect the register of members.

## **Division 2—Disciplinary action**

### **19 Grounds for taking disciplinary action**

- (1) The Board may decide there are grounds to discipline or expel a member if the member –
  - (a) has failed to comply with these Rules; or
  - (b) has failed to comply with the procedures or policies of the Association;
  - (c) is not supporting the purposes of the Association; or
  - (d) has engaged in conduct prejudicial to the Association, by act or omission, and the Board determines it is in the interest of the Association for a member to no longer remain a member.

### **20 Decision maker**

If the Board is satisfied that an investigation is warranted, the Board may investigate matters and make a decision in accordance with Rule 22 itself or by sub-committee or by a third party provided that the decision maker is unbiased.

### **21 Notice to Member**

- (1) The decision maker must hold a meeting to consider the issues referred to it in Rule 19. Before any meeting, the decision maker must give written notice to the member –
  - (a) setting out the issues; and
  - (b) specifying the date, place and time of the meeting; and
  - (c) informing the member that he or she may do one or both of the following –
    - i. attend the meeting to address the meeting;
    - ii. give a written statement to the decision maker no later than three (3) business days before the meeting.
- (2) The notice to the member must be given no earlier than 28 days, and no later than 14 days, before the meeting is held.

### **22 Decision of the decision maker**

- (1) At the meeting, the decision maker must—

- (a) give the member an opportunity to be heard; and
- (b) consider any written statement submitted by the member.
- (2) The decision maker has 4 weeks to consider the issues from the date of the meeting and may call for further information and hearings.
- (3) After complying with sub rules (1) and (2), the decision maker may—
  - (a) take no further action against the member; or
  - (b) subject to sub rule (4)—
    - i. reprimand the member; or
    - ii. suspend the membership rights of the member for a specified period; or
    - iii. expel the member from the Association.
- (4) The decision maker may not fine the member.
- (5) The suspension of membership rights or the expulsion of a member by the decision maker under this Rule takes effect immediately.
- (6) A determination by the decision maker is final and binding on all parties.

### **Division 3—Grievance procedure**

#### **23 Application**

- (1) The grievance procedure set out in this Division applies to disputes under these Rules between—
  - (a) a member and another member
  - (b) a member and the Board;
  - (c) a member and the Association.

A member who has received a notice under Rule 21 must not initiate a grievance procedure under this Rule until the determination of the disciplinary procedure.

#### **24 Parties must attempt to resolve the dispute**

The parties to a dispute must attempt to resolve the dispute between themselves within 14 days of the dispute coming to the attention of each party.

#### **25 Appointment of mediator or decision maker**

- (1) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by Rule 24, any party to a dispute between members may refer the dispute to the Board for determination or mediation.
- (2) The Board itself or by subcommittee may subject to this Rule act as a mediator or decision maker provided it is unbiased or may appoint a third party as a mediator or decision maker.
- (3) If there is a dispute between the Association and a member, either party may require the dispute to be referred to mediation or for determination
- (4) The mediator or decision maker must be unbiased and—
  - (a) a person chosen by agreement between the parties to the dispute; or
  - (b) in the absence of agreement within 14 days of a party requiring mediation—
    - (i) in the case of a dispute between a member and another member— a person appointed by the Board; or

- (ii) if the dispute is between a member and the Board or the Association—a person who is a mediator or decision maker appointed or employed by the Dispute Settlement Centre of Victoria or its successor in law or the Law Institute of Victoria or its delegate.
- (5) A mediator or decision maker appointed by the Board may be a member or former member of the Association provided they are unbiased.
- (6) Any party to a dispute may appoint any person to act on behalf of that party at their own expense.

## **26 Mediation process**

- (1) The mediator to the dispute, in conducting the mediation, must—
  - (a) give each party a reasonable opportunity to be heard; and
  - (b) give due consideration to any written statement submitted by a party no later than 3 business days before the mediation; and
  - (c) ensure that natural justice is accorded to the parties throughout the mediation process.
- (2) If the mediation process does not result in the dispute being resolved, within a reasonable time as decided by the mediator, or failing this decision, within one month of the party requiring mediation, any party to the dispute may refer the matter to unbiased decision maker.
- (3) The cost of the mediation will be borne by the initiating party. The Board may at its discretion, authorise reimbursement of any reasonable costs incurred by the parties to the Mediation.
- (4) A determination under this Rule is final and binding on all parties to the dispute.

## **PART 4—GENERAL MEETINGS OF THE ASSOCIATION**

### **27 Annual general meetings**

- (1) The Board must convene an annual general meeting of the Association to be held within 5 months after the end of each financial year.
- (2) Despite sub rule (1), the Association may hold its first annual general meeting at any time within 18 months after its incorporation.
- (3) The Board may determine the date, time and place of the annual general meeting.
- (4) The ordinary business of the annual general meeting is as follows—
  - (a) to confirm the minutes of the previous annual general meeting and of any special general meeting held since then;
  - (b) receive and consider—
    - i. the annual report of the Board on the activities of the Association during the preceding financial year; and
    - ii. the financial statements of the Association for the preceding financial year submitted by the Board in accordance with Part 7 of the Act;
  - (c) to elect the members of the Board.
- (5) The annual general meeting may also conduct any other business of which notice has been given in accordance with these Rules.

## **28 Special general meetings**

- (1) Any general meeting of the Association, other than an annual general meeting is a special general meeting.
- (2) The Board may convene a special general meeting whenever it thinks fit.
- (3) No business other than that set out in the notice under Rule 30 may be conducted at the meeting.

## **29 Special general meeting held at request of members**

- (1) The Board must convene a special general meeting if valid purposes for such a meeting is made in accordance with sub rule (2) by at least 20% of the total number of members.
- (2) A request for a special general meeting must—
  - (a) be in writing; and
  - (b) state the valid purposes for a special general meeting in full and any special resolutions to be proposed; and
  - (c) include the names and signatures of the members requesting the meeting; and
  - (d) be given to the Secretary.
- (3) If a special general meeting is validly requisitioned, the Board must send a notice of meeting within one month of receipt of requisition. If it fails to do so, the members making the request may convene the special general meeting.
- (4) A special general meeting convened by members under sub rule (3)—
  - (a) must be held within 3 months after the date on which the original request was made; and
  - (b) may only consider the business stated in that request.
- (5) The Association must reimburse all reasonable expenses incurred by the members convening a special general meeting under sub rule (3).

## **30 Notice of general meetings**

- (1) The Secretary (or, in the case of a special general meeting convened under Rule 29(3), the members convening the meeting) must give to each member of the Association—
  - (a) at least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting; or
  - (b) at least 14 days' notice of a general meeting in any other case.
- (2) The notice must—
  - (a) specify the date, time and place of the meeting; and
  - (b) indicate the general nature of each item of business to be considered at the meeting; and
  - (c) if a special resolution is to be proposed—
    - i. state in full the proposed resolution; and
    - ii. state the intention to propose the resolution as a special resolution; and
  - (d) comply with Rule 31(6).

### **31 Proxies**

- (1) A member may appoint another member as his or her proxy to vote and speak on his or her behalf at a general meeting.
- (2) Only a member eligible to vote at that general meeting may hold a proxy, and except for the person presiding over the meeting, who may be given any number of proxies in that designation, no member may hold more than 2 proxies.
- (3) Voting shall first be by show of hands of those present, to which the proxy votes will be added by show of hands and declaration by the person presiding as to the number of proxy votes held by him or her.
- (4) The appointment of a proxy must be in writing and signed by the member making the appointment.
- (5) The member appointing the proxy may give specific directions as to how the proxy is to vote on his or her behalf, otherwise the proxy may vote on behalf of the member in any matter as he or she sees fit.
- (6) If the Board has approved a form for the appointment of a proxy, the member must use the approved form. Where no form is approved, the proxy appointment must be in writing that clearly identifies the person appointed as the member's proxy and is signed by the member.
- (7) Notice of a general meeting given to a member under Rule 30 must—
  - (a) State that the member may appoint another member as a proxy for the meeting; and
  - (b) include a copy of any form that the Board has approved for the appointment of a proxy.
  - (c) A form appointing a proxy must be given to the Chairperson of the meeting before or at the commencement of the meeting.
- (8) A form appointing a proxy sent by post or electronically is of no effect unless it is received by the Association no later than 24 hours before the commencement of the meeting.

### **32 Use of technology**

- (1) A member not physically present at a general meeting may be permitted to participate in the meeting by the use of technology that allows that member and the members present at the meeting to clearly and simultaneously communicate with each other.

For the purposes of this Part, a member participating in a general meeting as permitted under sub rule (1) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

### **33 Quorum at general meetings**

- (1) No business may be conducted at a general meeting unless a quorum of members is present.
- (2) The quorum for a general meeting is the presence (physically, by proxy or as allowed under Rule 31) of 5 of the members entitled to vote.
- (3) If a quorum is not present within 30 minutes after the notified commencement time of a general meeting—
  - (a) in the case of a meeting convened by, or at the request of members

under Rule 29—the meeting must be dissolved;

- (b) in any other case—
  - i. the meeting must be adjourned to a date not more than 21 days after the adjournment; and
  - ii. notice of the date, time and place to which the meeting is adjourned must be given by written notice to all members as soon as practicable after the meeting.
- (4) If a quorum is not present within 30 minutes after the time to which a general meeting has been adjourned under sub Rule (3)(b), the members present at the meeting (if not fewer than 3) may proceed with the business of the meeting as if a quorum were present.

### **34 Adjournment of general meeting**

- (1) The Chairperson of a general meeting at which a quorum is present may, with the consent of a majority of members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- (2) Without limiting sub rule (1), a meeting may be adjourned—
  - (a) if there is insufficient time to deal with the business at hand; or
  - (b) to give the members more time to consider an item of business.
- (3) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- (4) Notice of the adjournment of a meeting under this Rule is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with Rule 30.

### **35 Voting at general meeting**

- (1) On any question arising at a general meeting—
  - (a) subject to sub rule (3), each member who is entitled to vote has one vote; and
  - (b) members may vote personally or by proxy; and
  - (c) except in the case of a special resolution, the question must be decided  
on a majority of votes.
- (2) If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.  
If the question is whether or not to confirm the minutes of a previous meeting, only members who were present at that meeting may vote.

### **36 Special Resolutions**

A special resolution is passed if not less than three quarters of the members voting at a general meeting (whether in person or by proxy) vote in favour of the resolution.

### **37 Determining whether resolution carried**

- (1) Subject to subsection (2), the Chairperson of a general meeting may, on the basis of a show of hands, declare that a resolution (including special resolution) has been—
  - (a) carried; or
  - (b) carried unanimously; or
  - (c) carried by a particular majority; or
  - (d) lost—and an entry to that effect in the minutes of the meeting is conclusive proof of that fact without proof of the number or proportion of votes recorded in favour of or against the resolution.
- (2) If a poll (where votes are cast in writing) is demanded by the Chairperson or three or more members on any question—
  - (a) the poll must be taken at the meeting in the manner determined by the Chairperson of the meeting; and
  - (b) the Chairperson must declare the result of the resolution on the basis of the poll.
- (3) A poll demanded on a question of an adjournment must be taken immediately.
- (4) A poll demanded on any other question must be taken before the close of the meeting at a time determined by the Chairperson.
- (5) The demand for a poll may be withdrawn.

### **38 Minutes of general meeting**

- (1) The Board must ensure that minutes are taken and kept of each general meeting.
- (2) The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- (3) In addition, the minutes of each annual general meeting must include—
  - (a) the names of the members attending the meeting and any apologies received; and
  - (b) proxy forms received by the Chairperson of the meeting under Rule 31(6); and
  - (c) the financial statements submitted to the members in accordance with Rule 27(4)(b)(ii); and
  - (d) the certificate signed by two Board members certifying that the financial statements give a true and fair view of the financial position and performance of the Association; and
  - (e) any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.

## **PART 5—BOARD**

### **Division 1—Powers of the Board**

#### **39 Role and powers**

- (1) The business of the Association must be managed by or under the direction of a Board.
- (2) The Board may exercise all the powers of the Association except those powers that these Rules or the Act require to be exercised by general meetings of the members of the Association.
- (3) The Board may—
  - (a) appoint and remove staff;
  - (b) establish subcommittees consisting of members with terms of reference it considers appropriate.

#### **40 Delegation**

- (1) The Board may delegate to a member of the Board, a subcommittee or staff, any of its powers, discretions, functions and duties vested in or exercisable by the Board members on the terms the Board members decide other than—
  - (a) this power of delegation; or
  - (b) a duty imposed on the Board by the Act or any other law.
- (2) The delegation must be in writing and may be subject to the conditions and limitations the Board considers appropriate.
- (3) The Board may, in writing, revoke a delegation wholly or in part.

### **Division 2—Composition of Board and duties of members**

#### **41 Composition of Board**

- (1) Upon adoption of these Rules, the Board consist of those persons who were Board members immediately prior to the adoption of these Rules.
- (2) The Board must consist of:
  - (a) A Chairperson; and
  - (b) A Deputy Chairperson; and
  - (c) 4 to 10 ordinary board members
- (3) The minimum number of Board members is 6. The maximum number of Board is 12.
- (4) Subject to Rule 45, the Board members may appoint any individual Member as a Board Member either to fill a casual vacancy, a position that has become vacant under Rule 51, or as an addition to the existing Board Members, provided the number of board members does not exceed the maximum number fixed under Rule 41 (3)
- (5) A Board member appointed by the Board members under sub rule 4 holds office only until the conclusion of the next annual general meeting following his or her appointment.



## **42 General Duties**

- (1) As soon as practicable after being elected or appointed to the Board, each Board member must become familiar with these Rules and the Act.
- (2) The Board is collectively responsible for ensuring that the Association complies with the Act and that individual members of the Board comply with these Rules.
- (3) Board members must exercise their powers and discharge their duties with reasonable care and diligence.
- (4) Board members must exercise their powers and discharge their duties—
  - (a) in good faith in the best interests of the Association; and
  - (b) for a proper purpose.
- (5) Board members and former Board members must not make improper use of—
  - (a) their position; or
  - (b) information acquired by virtue of holding their position—so as to gain an advantage for themselves or any other person or to cause detriment to the Association.
- (6) In addition to any duties imposed by these Rules, a Board member must perform any other duties imposed from time to time by resolution at a general meeting.

## **43 Chairperson and Deputy Chairperson**

- (1) The Board members must elect a Chairperson and Deputy Chairperson and may decide the period for which that Board member is to hold that position.
- (2) Subject to sub rule (3), the Chairperson or, in the Chairperson's absence, the Deputy Chairperson is the Chairperson for any general meetings and for any Board meetings.
- (3) If the Chairperson and the Deputy Chairperson are both absent, or are unable to preside, the Chairperson of the meeting must be—
  - (a) in the case of a general meeting—a Board member who is present and able to preside or failing that a member who is present and able to preside elected by the other members present; or
  - (b) in the case of a Board meeting—a Board member elected by the other Board members present.
- (4) The Board may elect other positions as and when the Board members decide and may decide the period for which that Board member is to hold that position.

## **44 Secretary**

- (1) Appointment
  - (a) The Board members must appoint a Secretary to hold the position subject to the Act and carry out the duties provided in the Act and any additional duties as decided by the Board members.
  - (b) Before being appointed, the Secretary must:
    - a. consent to the appointment; and
    - b. be at least 18 years old and a resident of Australia.

- (c) The Secretary may hold any other position in the Association but is not required to be a Board member or a member of the Association.
  - (d) Rule 42 relating to general duties applies to the Secretary as though he or she is a Board member.
- (2) Vacation of office
- (a) The office of the Secretary becomes vacant if the Secretary:
    - 1) becomes an insolvent under administration within the meaning of the Corporations Act 2001 (Cth); or
    - 2) is found guilty of or convicted of an indictable offence punishable by imprisonment, whether or not a term of imprisonment is imposed; or
    - 3) becomes a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; or
    - 4) is removed from office by a resolution of the Board members
    - 5) resigns by written notice to the Association; or
    - 6) ceases to reside in Australia.
  - (b) The Board members must appoint a new Secretary within 14 days of the office becoming vacant and provide notice as required under the Act. If it is not practicable to appoint a Secretary within 14 days, the Board must appoint a person to temporarily fill the roll, until an official Secretary is appointed.

### **Division 3—Election of Board members and tenure of office**

#### **45 Who is eligible to be a Board Member**

- (1) To be eligible to be nominated, elected or appointed as, and continue to be, a Board member the member must be—
  - (a) 18 years or over; and
  - (b) entitled to vote at a general meeting; and
  - (c) not be disqualified from managing a corporation under the Corporations Act 2001 (Cth) nor from being a responsible person under the ACNC Commissions Act 2012 (Cth).
- (2) Any elected or appointed Board member who has held office for the maximum period under Rule 50, not including part of a term filled as a casual vacancy, is not eligible to be re-elected without a break of at least 3 years other than the Chairperson. The Chairperson may remain on the Board for one further term of up to three years if elected to do so by members at the Annual General Meeting.
- (3) After a break of at least 3 years from ceasing to be a Board member, a person who has served a maximum term is able to be reappointed and re-elected.

#### **46 Nominations of Board Members**

- (1) Nominations of candidates for election as Board members must be called for at least 14 days prior to the annual general meeting. The notice calling for nominations must list the following:

- (a) those Board members ceasing to be Board member and whether they are standing for re-election, and the term for their re-election under Rule 50; and
  - (b) the maximum number of Board members for election at the annual general meeting which will be determined by the Board; and
  - (c) the date the nominations must be received by the Secretary.
- (2) The nominations must be:
- (a) for a candidate who is eligible under Rule 45; and
  - (b) made in writing for a term under Rule 50 on a form approved by the Board, signed by two Members other than the candidate; and
  - (c) accompanied by a short biographical statement and written consent of the candidate (which may be endorsed on the form of the nomination); and
  - (d) delivered to the Secretary before the date notified.

#### **47 Election of Board Members**

- (1) The Board must by resolution decide the number of Board members it wishes to hold office and seek nomination for those positions under Rule 46.
- (2) A single election may be held to fill all of those positions that are vacant.
- (3) If the number of Board members nominated for the position of Board member is less than or equal to the number to be elected, the Chairperson of the meeting must declare each of those Board members to be elected to the position.
- (4) If the number of members nominated exceeds the number to be elected, a ballot must be held in accordance with Rule 49.
- (5) The Board may continue to act, with a minimum number of board members, being 6, despite any vacancy in its membership.

#### **48 Co-Opt**

- (1) The Board may:
  - (a) at its first meeting after the annual general meeting each year; and
  - (b) at any subsequent meeting,
 subject to Rule 45 co-opt individuals as Board members. The total number of co-opt members is limited by the maximum number of Board members as determined in Rule 41(3).
- (2) Co-opted Board members must be, or become, members of the Association.
- (3) A Co-opted Board member appointed by the Board members under sub rule 48 (1) holds office only until the conclusion of the next annual general meeting following his or her appointment.

#### **49 Ballot**

- (1) If a ballot is required for the election for a Board position, the Chairperson of the meeting must appoint a member to act as returning officer to conduct the ballot. If the Chairperson of the meeting is up for re-election the Chairperson must appoint the Deputy Chairperson or if that person is ineligible under sub

rule 2, the CEO or any other Board member provided that the person is not ineligible under sub rule 2.

- (2) The returning officer must not be a member nominated for the Board position.
- (3) Before the ballot is taken, the Chairperson of the meeting may invite each candidate to make a short speech in support of his or her election.
- (4) The election must be by secret ballot.
- (5) The returning officer must give a form authorised by the Board or if no form is authorised a blank piece of paper to—
  - (a) each member present in person; and
  - (b) each proxy appointed by a member.
- (6) If the ballot is for a single position, the voter must indicate on the ballot paper the candidate for whom they wish to vote.
- (7) If the ballot is for more than one position—
  - (a) the voter must indicate on the ballot paper each candidate for whom they wish to vote;
  - (b) the voter must not indicate the names of more candidates than the number to be elected.
- (8) Ballot papers that do not comply with sub rule (7)(b) are not to be counted.
- (9) Each ballot paper on which the candidate has been indicated counts as one vote for that candidate.
- (10) The returning officer must declare elected the candidate or, in the case of an election for more than one position, the candidates who received the most votes.
- (11) If the returning officer is unable to declare the result of an election under sub rule (10) because 2 or more candidates received the same number of votes, the returning officer must—
  - (a) conduct a further election for the position in accordance with sub rules (4) to (10) to decide which of those candidates is to be elected; or
  - (b) with the agreement of those candidates, decide by lot which of them is to be elected.

## **50 Term of office**

- (1) Board members holding office as at the time of adoption of these Rules, are deemed to have held office from the date of their first election and not at the time of adoption of these rules.
- (2) Elected Board members hold office:
  - (a) from the end of the annual general meeting at which they are elected;
  - (b) until the end of the annual general meeting for the period they are elected or re-elected. This maybe for one, two or three year terms subject to Rule 45(2) and Rule 45(3).
- (3) Board members may be re-elected and serve the maximum term (other than the Chairperson) which is up to the first annual general meeting following the expiry of 9 years from the date of the Board member's first election.
- (4) The Board may, by resolution passed by an absolute majority, remove an elected Board member who has failed to attend 3 consecutive Board meetings or more without leave of absence under clause 62.
- (5) Subject to this rule –

- (a) A special resolution may be passed at a general meeting to remove any Board member provided the Board is left with no less than 6 Board members.
  - (b) The Board member who is the subject of the proposed special resolution under this sub rule 5 may make a representation in writing to the Chairperson or the Deputy Chairperson (not exceeding a reasonable length) and request that the representation be notified to the members. The Chairperson or Deputy Chairperson may send a copy of the representation to each member or if it is not sent the Board member may require that it be read out at the general meeting, prior to the vote.
- (6) If there is a vacancy in its membership (including a vacancy under sub rule 5, the Board may appoint an individual who would be eligible to be elected under these Rules to fill the vacancy for the remainder of the term of office.
- (7) The Board may continue to act despite any vacancy in its membership.
- (8) Even if it is subsequently found that a person who has acted as a Board member was not properly elected or appointed, the validity of:
- (a) the acts of that person as a Board member, and
  - (b) decisions of Board meetings in which that person has participated, is not affected.

#### **51 Vacation of office**

- (1) A Board member may resign from the Board by written notice addressed to the Chairperson or Secretary.
- (2) A person ceases to be a Board member if he or she:
- (a) ceases to be a member of the Association; or
  - (b) fails to attend 3 consecutive committee meetings (other than special or urgent committee meetings) without leave of absence under Rule 62; or
  - (c) becomes insolvent under administration within the meaning of the Corporations Act 2001 (Cth); or
  - (d) is found guilty of or convicted on an indictable offence punishable by imprisonment, whether or not a term of imprisonment is imposed; or
  - (e) becomes a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; or
  - (f) is disqualified from being a responsible entity within the meaning of the Australian Charities and Not-for-Profits Commission Act 2012 (Cth); or
  - (g) is removed from office by Board members under Rule 50(4) or by special resolution of members under Rule 50(5); or
  - (h) otherwise ceases to be a committee member by operation of section 78 of the Act.
- (3) All Board members cease to be in office if a statutory manager is appointed under the Act to conduct the affairs of the Association

## **Division 4—Meetings of the Board**

### **52 Meetings of Board**

- (1) The Board must meet at least 4 times in each year at the dates, times and places determined by the Board.
- (2) The date, time and place of the first Board meeting must be determined by the members of the Board as soon as practicable after the annual general meeting of the Association at which the members of the Board were elected.
- (3) Special Board meetings may be convened by the Chairperson or by any 4 members of the Board.

### **53 Notice of meetings**

- (1) Notice of each Board meeting must be given to each Board member no later than 7 days before the date of the meeting.
- (2) Notice may be given of more than one Board meeting at the same time.
- (3) The notice must state the date, time and place of the meeting.
- (4) If a special Board meeting is convened, the notice must include the general nature of the business to be conducted.
- (5) The only business that may be conducted at the meeting is the business for which the meeting is convened.

### **54 Urgent meetings**

- (1) In cases of urgency, a meeting can be held without notice being given in accordance with Rule 53(1) provided that as much notice as practicable is given to each Board member by the quickest means practicable.
- (2) Any resolution made at the meeting must be passed by an absolute majority of the Board.
- (3) The only business that may be conducted at an urgent meeting is the business for which the meeting is convened.

### **55 Procedure and order of business**

- (1) The procedure to be followed at a meeting of a Board must be determined from time to time by the Board.
- (2) The order of business may be determined by the members present at the meeting.

### **56 Use of technology**

- (1) A Board member who is not physically present at a Board meeting may participate in the meeting by the use of technology that allows that Board member and the Board members present at the meeting to clearly and simultaneously communicate with each other.
- (2) For the purposes of this Part, a Board member participating in a Board meeting as permitted under sub rule (1) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

## **57 Resolutions without meeting**

- (1) Subject to this Rule, Board members may pass resolutions without meeting, by email or other written form such as delivery of documents through electronic mail.
- (2) Passage of any resolution without meeting requires an affirmative response from 4 or an absolute majority of Board members (whichever is the greater) and an endorsement of the resolution by Board members at the next scheduled Board meeting.

## **58 Quorum**

- (1) No business may be conducted at a Board meeting unless a quorum is present.
- (2) The quorum for a committee meeting is the presence (in person or as allowed under Rule 56) of 4 Board members or 50% of the Board members holding office whichever is the greater number.
- (3) If a quorum is not present within 30 minutes after the notified commencement time of a committee meeting—
  - (a) in the case of a special meeting—the meeting lapses;
  - (b) in any other case—the meeting must be adjourned to a date no later than 14 days after the adjournment and notice of the time, date and place to which the meeting is adjourned must be given in accordance with Rule 53.

## **59 Voting**

- (1) On any question arising at a Board meeting, each Board member present at the meeting has one vote.
- (2) A motion is carried if a majority of Board members present at the meeting vote in favour of the motion. Such a decision is for all purposes a decision of the Board members.
- (3) Sub rule (2) does not apply to any motion or question which is required by these Rules to be passed by an absolute majority of the Board.
- (4) If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- (5) Voting by proxy is not permitted.

## **60 Conflict of interest**

- (1) A Board member who has an actual, potential or perceived material conflict of interest (including a material personal interest) in a matter being considered at a Board meeting must:
  - (a) as soon as he or she becomes aware of his or her interest, disclose to Board members the nature and extent of that interest and the relation of the interest to the activities of the Association.
  - (b) where it is a material personal interest, disclose the nature and extent of the interest to the members at the next general meeting.

- (2) The Board member who has the actual, potential or perceived material conflict of interest in a matter being considered by the Board members, must not, unless sub rule 3 applies—
  - (a) be present while the matter is being considered at the meeting; and
  - (b) vote on the matter.
- (3) Rule 60(1) does not apply in respect of an interest that exists by virtue of the fact that the Board member—
  - (a) is a member of a class of persons for whose benefit the Association is established; or
  - (b) has the interest in common with all, or a substantial proportion of, the members of the Association; or
  - (c) is an employee of the Association.
- (4) A disclosure under sub rule 1 must be recorded in the minutes of the meetings at which the disclosure is made. This may be a standing notice of disclosure.

#### **61 Minutes of meeting**

- (1) The Board must ensure that minutes are taken and kept of each Board meeting.
- (2) The minutes must record the following—
  - (a) the names of the members in attendance at the meeting;
  - (b) The list of apologies for the meeting;
  - (c) The business considered at the meeting;
  - (d) Any resolution on which a vote is taken and approved by the Board members;
  - (e) any material personal interest disclosed under Rule 60.

#### **62 Leave of absence**

- (1) The Board may grant a Board member leave of absence from Board meetings for a period not exceeding 6 months.
- (2) The Board must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Board member to seek the leave in advance.

### **PART 6—FINANCIAL MATTERS**

#### **63 Source and management of funds**

- (1) The funds of the Association may be derived from fees, annual subscriptions, donations, fund-raising activities, grants, sponsorships, interest and any other sources approved by the Board;
- (2) All funds must be managed in a responsible manner as decided by the Board members;
- (3) All electronic fund transfers, cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed as the Board members decide or failing a decision, by any 2 Board members.

#### **64 Financial records**

- (1) The Association must keep financial records that –



- (a) correctly record and explain its transactions, financial position and performance; and
  - (b) enable financial statements to be prepared as required by the Act.
- (2) The Association must retain the financial records for 7 years after the transactions covered by the records are completed.

#### **65 Financial statements**

- (1) For each financial year, the Board must ensure that the requirements under the Act relating to the financial statements of the Association are met.
- (2) Without limiting sub rule (1), those requirements include—
- (a) the preparation of the financial statements;
  - (b) if required, the review or auditing of the financial statements;
  - (c) the certification of the financial statements by two Board members;
  - (d) the submission of the financial statements to the annual general meeting of the Association;
  - (e) the lodgement with the Registrar of the financial statements and accompanying reports, certificates, statements and fee.

### **PART 7—GENERAL MATTERS**

#### **66 Public Fund**

- (1) The Association, so long as it is a Deductible Gift Recipient under the ITAA 97, may establish and maintain a public fund for the purpose of receiving gifts and deductible contributions for the furtherance of the Association's purposes as set out in Rule 2.
- (2) The Board shall decide on the manner and terms for the creation and maintenance of such a public fund and shall establish policy, accounting and administrative arrangements to ensure all legal and financial requirements are complied with (including Subdivision 30-F of the ITAA 97 or any modification or replacement thereof) and the public fund is and remains listed on the Register of Cultural Organisations maintained by the Australian Government (or any successor register or listing).

#### **67 Winding up or ceasing to be a deductible gift recipient**

- (1) At the first occurrence of—
- (a) the winding up of the Association or;
  - (b) the Association ceasing to be a deductible gift recipient under the ITAA 97;
- any surplus assets of the Public Fund must be transferred to a fund, authority or institution:
- (a) which is charitable at law;
  - (b) whose constitution prohibits distributions or payments to its members to an extent at least as great as is outlined in Rule 6.
  - (c) Gifts to which can be deducted under Division 30 of the ITAA 97.
- (2) The identity of the fund, authority or institution referred to in Rule 66 must be decided by the Board, or if the Board does not wish to decide or does not

decide, it must be decided by the Members by ordinary resolution and, if the Members do not decide, by the Supreme Court of Victoria.

#### **68 Common seal**

- (1) The Association may have a common seal.
- (2) If the Association has a common seal:
  - (a) the name of the Association must appear in legible characters on the common seal;
  - (b) a document may only be sealed with the common seal by the authority of the Board and the sealing must be witnessed by the signatures of two Board members;
  - (c) the common seal must be kept in the custody of the Secretary.

#### **69 Registered address**

- (1) The registered address of the Association is—
  - (a) the address determined from time to time by resolution of the Board; or
  - (b) if the Board has not determined an address to be the registered address—the postal address of the Secretary.

#### **70 Notice requirements**

- (1) Any notice required to be given to a member or a Board member under these Rules may be given—
  - (a) by handing the notice to the member personally; or
  - (b) by sending it by post to the member at the address recorded for the member on the register of members; or
  - (c) by email or facsimile transmission.
- (2) Sub rule (1) does not apply to notice given under Rule 54.
- (3) Any notice required to be given to the Association or the Board may be given—
  - (a) by handing the notice to a member of the Board; or
  - (b) by sending the notice by post to the registered address; or
  - (c) by leaving the notice at the registered address; or
  - (d) if the Board determines that it is appropriate in the circumstances—
    - i. by email to the email address of the Association or the Secretary; or
    - ii. by facsimile transmission to the facsimile number of the Association.

#### **71 Custody and inspection of books and records**

- (1) Members may on request to the Chairperson or Secretary inspect free of charge—
  - (a) the register of members;
  - (b) the minutes of general meetings;
  - (c) subject to sub rule (2), the financial records, books, securities and any other relevant document of the Association, including minutes of Board meetings.

- (2) The Board may refuse to permit a member to inspect records of the Association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.
- (3) The Board must on request make copies of these Rules available to members and applicants for membership free of charge.
- (4) Subject to sub rule (2), a member may make a copy of any of the other records of the Association referred to in this Rule and the Association may charge a reasonable fee for provision of a copy of such a record.
- (5) For purposes of this Rule—  
**relevant documents** means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of the Association and includes the following—
  - (a) its membership records;
  - (b) its financial statements;
  - (c) its financial records;
  - (d) records and documents relating to transactions, dealings, business or property of the Association.

## **72 Returning documents to the Association**

Any person who has possession or control of documents that belong to the Association is required to return the documents to the Secretary within 28 days after the person ceases to be a member or ceases to hold the position or role by virtue of which he or she has possession or control of the documents.

## **73 Winding up and cancellation**

- (1) The Association may be wound up voluntarily by special resolution.
- (2) In the event of the winding up or the cancellation of the incorporation of the Association, the surplus assets of the Association must not be distributed to any members or former members of the Association.
- (3) Subject to the Act and any court order made under section 133 of the Act, the surplus assets must be given to a body that has similar purposes to the Association and which is not carried on for the profit or gain of its individual members.
- (4) The body to which the surplus assets are to be given must be decided by special resolution.

## **74 Alteration of Rules**

- (1) These Rules may only be altered by special resolution of a general meeting of the Association.