

CONSTITUTION OF MUSICA VIVA AUSTRALIA  
Adopted 21 May 2016

# **CONSTITUTION OF MUSICA VIVA AUSTRALIA**

Australian Company Number (ACN) 000 111 848  
Australian Business Number (ABN) 94 504 497 655

A company limited by guarantee

## Table of contents

### Preliminary

- 1 Name of the company
- 2 Type of company
- 3 Limited liability of members
- 4 The guarantee
- 5 Definitions

### Charitable purposes and powers

- 6 Object
- 7 Powers
- 8 Not-for-profit
- 9 Amending the constitution

### Members

- 10 Membership and register of members
- 11 Who can be a member
- 12 How to apply to become a member
- 13 Directors decide whether to approve membership
- 14 When a person becomes a member
- 15 When a person stops being a member

### Dispute resolution and disciplinary procedures

- 16 Dispute resolution
- 17 Disciplining members

### General meetings of members

- 18 General meetings called by directors
- 19 General meetings called by members
- 20 Annual general meeting
- 21 Notice of general meetings
- 22 Quorum at general meetings
- 23 Auditor's right to attend meetings
- 24 Representatives of members
- 25 Using technology to hold meetings
- 26 Chairperson for general meetings
- 27 Role of the chairperson
- 28 Adjournment of meetings

### Members' resolutions and statements

- 29 Members' resolutions and statements
- 30 Company must give notice of proposed resolution or distribute statement
- 31 Circular resolutions of members

### Voting at general meetings

- 32 How many votes a member has
- 33 Challenge to member's right to vote
- 34 How voting is carried out
- 35 When and how a vote in writing must be held
- 36 Appointment of proxy
- 37 Voting by proxy

### Directors

- 38 Number of directors
- 39 Election and appointment of directors
- 40 Election of chairperson
- 41 Term of office
- 42 When a director stops being a director

### Powers of directors

- 43 Powers of directors
- 44 Delegation of directors' powers
- 45 Payments to directors
- 46 Execution of Documents

### Directors' meetings

- 47 When the directors meet
- 48 Calling directors' meetings
- 49 Chairperson for directors meetings
- 50 Quorum at directors' meetings
- 51 Using technology to hold directors' meetings
- 52 Passing directors' resolutions
- 53 Circular resolutions of directors

## Secretary

54 Appointment and role of secretary

## Minutes and records

55 Minutes and records

56 Financial and related records

## By-laws

57 By-laws

## Gift Fund

58 The Gift Fund

59 Limits on use of the Gift Fund

60 Maintaining the Gift Fund

61 Winding up of the Gift Fund

62 Surplus assets not to be distributed to members

## Deductible Gift Recipient Status

63 Maintaining Deductible Gift Recipient status

64 Winding up or revocation of endorsement

65 Surplus assets not to be distributed to members

## Notice

66 What is notice

67 Notice to the company

68 Notice to members

69 When notice is taken to be given

## Financial year

70 Company's financial year

## Indemnity, insurance and access

71 Indemnity

72 Insurance

73 Directors' access to documents

## Winding up

74 Surplus assets not to be distributed to members

75 Distribution of surplus assets

## Definitions and interpretation

76 Definitions

77 Reading this constitution with the Corporations Act

78 Interpretation

## Preliminary

### 1. Name of the Company

- 1.1 The name of the company is Musica Viva Australia (the **Company**).

### 2. Type of company

- 2.1 The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

### 3. Limited liability of members

- 3.1 The liability of members is limited to the amount of the guarantee in clause 4.

### 4. The guarantee

- 4.1 Each member (other than an honorary life member) must contribute an amount not more than \$10 (the guarantee) to the property of the Company if the Company is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- (a) debts and liabilities of the Company incurred before the member stopped being a member, or
- (b) costs of winding up.

An honorary life member does not have to contribute any amount to the property of the Company if the Company is wound up.

### 5. Definitions

- 5.1 In this constitution, words and phrases have the meanings set out in clauses 76 and 78.

## Charitable purposes and powers

### 6. Object

- 6.1 The Company's object is to pursue the following charitable purposes:
- (a) promoting, encouraging and providing in Australia and elsewhere, for the performance, practice and knowledge of music and its allied arts
  - (b) advancing the interests of persons engaged in the pursuit or practice of music and its allied arts,
  - (c) inviting and encouraging members of the public and others to make gifts of money and property and seeking grants and philanthropic donations for the purposes of the Company;
  - (d) co-operating and working in partnership with others with similar purposes; and
  - (e) doing all such things as are ancillary or incidental to any of the above.

### 7. Powers

- 7.1 Subject to clause 8, the Company has the following powers, which may only be used to carry out its purposes set out in clause 6:
- (a) the powers of an individual, and
  - (b) all the powers of a company limited by guarantee under the **Corporations Act**.

CONSTITUTION OF MUSICA VIVA AUSTRALIA  
Adopted 21 May 2016

**8. Not-for-profit**

- 8.1 The Company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 75.
- 8.2 Clause 8.1 does not stop the Company from doing the following things, provided they are done in good faith:
- (a) paying a member for goods or services they have provided at fair and reasonable rates or rates more favourable to the Company or reasonable expenses properly incurred by the member in connection with the affairs of the Company, or
  - (b) making a payment to a member in carrying out the Company's charitable purposes.

**9. Amending the constitution**

- 9.1 Subject to clause 9.2, the members may amend this constitution by passing a special resolution by simple majority.
- 9.2 The members must not pass a special resolution that amends this constitution if passing it causes the Company to no longer be a charity.

## Members

**10. Membership and register of members**

- 10.1 The Company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
- (a) for each current member:
    - i. name,
    - ii. address,
    - iii. any alternative address nominated by the member for the service of notices, and
    - iv. date the member was entered on to the register; and
  - (b) for each person who stopped being a member in the last 7 years:
    - i. name,
    - ii. address,
    - iii. any alternative address nominated by the member for the service of notices, and
    - iv. dates the membership started and ended.
- 10.2 On and from 1 January 2017:
- a) the Company must have a minimum of 25 members and maximum of 50 members (or such higher number as resolved by the directors from time to time); and
  - b) no more than 50% of the total membership of the Company may have their primary place of residence in any one State or Territory of Australia.
- 10.3 The Company must give members access to the register of members in accordance with the Corporations Act.
- 10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

### **11. Who can be a member**

- 11.1 A person who demonstrates a significant commitment, either pre-existing or potential, to the purposes of the Company set out in clause 6 is eligible to apply to be a member under clause 12.
- 11.2 In this clause, 'person' means an individual or incorporated body.
- 11.3 In accordance with the Guidelines for Life Membership of the Company adopted by the directors from time to time, the directors may determine to award a member who has made an outstanding contribution to the Company over a substantial period with life membership of the Company. Any reference to a member in this constitution (other than in clause 12.1) includes an honorary life member.
- 11.4 If the directors determine under clause 13.5 that a president of a Musica Viva State Committee will be an ex officio member, that president will be an ex officio member for the term of their presidency. To avoid doubt, upon expiry of their term as a president of a Musica Viva State Committee, a former president may submit an application for membership under clause 12.1. Any reference to a member in this constitution (other than in clause 12.1) includes an ex officio member.

### **12. How to apply to become a member**

- 12.1 A person (as defined in clause 11.2) may apply to become a member by writing to the nominating committee (or such other person or committee as nominated by the directors) stating that they:
- (a) want to become a member,
  - (b) support the purposes of the Company,
  - (c) have been nominated, in writing, by two current members (and providing a copy of those nominations), and
  - (d) agree to comply with the Company's constitution, including paying the guarantee under clause 4 if required.

### **13. Directors decide whether to approve membership**

- 13.1 The directors may, in their sole discretion, determine whether to approve or reject an application for membership of the Company. The directors must consider an application for membership within a reasonable time after the nominating committee has put forward a recommendation for membership.
- 13.2 If the directors approve an application for membership, the secretary must as soon as possible:
- (a) enter the new member on the register of members, and
  - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 13.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 13.4 To avoid doubt, the directors may approve an application even if the application does not state the matters listed in clauses 12(a), 12(b) or 12(d). In that case, by applying to be a member, the applicant agrees to those three matters.
- 13.5 The directors may, in their sole discretion, determine whether to admit a president of a Musica Viva State Committee as a member. The directors must make their determination within a reasonable time after a person becomes a president of a Musica Viva State Committee. If the directors determine:

CONSTITUTION OF MUSICA VIVA AUSTRALIA  
Adopted 21 May 2016

- (a) to admit a president of a Musica Viva State Committee as a member, the secretary must as soon as possible, after receiving their agreement to become a member, enter the president on the register of members;
- (b) not to admit a president of a Musica Viva State Committee as a member, the secretary must (if the directors request) write to the president as soon as possible to advise them of the directors' determination, but does not have to give reasons.

**14. When a person becomes a member and term of membership**

An applicant will become a member when they are entered on the register of members and, subject to clause 15, will remain a member for three years. The directors may, with the written agreement of a member, extend the term of membership of that member as they determine (but not exceeding the period, if any, requested by the member) before the expiry of the member's three year membership term or any extended membership term.

**15. When a person stops being a member**

15.1 Subject to clause 15.2:

- (a) a person (other than an honorary life member, an ex officio member or a person referred to in clause 15.1(d)) ceases to be a member upon the expiry of their three year membership term or any extended membership term conferred under clause 14;
- (b) an honorary life member ceases to be a member only in accordance with clause 15.2;
- (c) an ex officio member ceases to be a member upon expiry of their term as a president of a Musica Viva State Committee; and
- (d) a person who was a member immediately before the adoption of this constitution ceases to be a member at 11:59:59 pm on 31 December 2016.

15.2 A person immediately stops being a member if they:

- (a) die, are mentally incapacitated, or are declared bankrupt (for an individual member),
- (b) are wound up or otherwise dissolved or deregistered (for an incorporated member),
- (c) resign, by writing to the secretary,
- (d) are expelled under clause 17, or
- (e) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

## **Dispute resolution and disciplinary procedures**

**16. Dispute resolution**

16.1 The dispute resolution procedure in this clause 16 applies to disputes under this constitution between a member or director and:

- (a) one or more members,
- (b) one or more directors, or
- (c) the Company.

16.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.

CONSTITUTION OF MUSICA VIVA AUSTRALIA  
Adopted 21 May 2016

- 16.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 16.4 If those involved in the dispute do not resolve it under clause 16.3, they must within 10 days:
- (a) tell the directors about the dispute in writing,
  - (b) agree or request that a mediator be appointed, and
  - (c) attempt in good faith to settle the dispute by mediation.
- 16.5 The mediator must:
- (a) be chosen by agreement of those involved, or
  - (b) where those involved do not agree:
    - i. for disputes between members, a person chosen by the directors, or
    - ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the State or Territory of Australia in which the Company has its registered office.
- 16.6 A mediator chosen by the directors under clause 16.5(b)(i):
- (a) may be a member or former member,
  - (b) must not have a personal interest in the dispute, and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 16.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard,
  - (b) allow those involved a reasonable chance to review any written statements,
  - (c) ensure that those involved are given natural justice, and
  - (d) not make a decision on the dispute.

**17. Disciplining members**

- 17.1 In accordance with this clause 17, the directors may resolve to warn a member, suspend a member's rights or expel a member from the membership of Company if the directors consider that:
- (a) the member has breached this constitution, or
  - (b) the member has materially failed to continue to meet the eligibility criteria for membership under clause 11.1.
- 17.2 At least 14 days before the directors' meeting at which a resolution under clause 17.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member,
  - (b) that this resolution will be considered at a directors' meeting and the date of that meeting,
  - (c) what the member is said to have done or not done,
  - (d) the nature of the resolution that has been proposed, and
  - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 17.3 Before the directors pass any resolution under clause 17.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting, and/or
  - (b) speaking at the meeting.
- 17.4 After considering any explanation under clause 17.3, the directors may:
- (a) take no further action,



CONSTITUTION OF MUSICA VIVA AUSTRALIA  
Adopted 21 May 2016

- (b) warn the member,
  - (c) suspend the member's rights as a member for a period of no more than 12 months,
  - (d) expel the member from the membership of the Company,
  - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
  - (f) require the matter to be determined at a general meeting.
- 17.5 The directors cannot fine a member.
- 17.6 The secretary must give written notice to the member of the decision under clause 17.4 within 30 days.
- 17.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 17.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause 17.

## General meetings of members

### 18. General meetings called by directors

- 18.1 The directors may call a general meeting.
- 18.2 If members with at least 20% of the votes that may be cast at a general meeting make a written request to the Company for a general meeting to be held, the directors must:
- (a) within 21 days of the members' request, give all members notice of a general meeting, and
  - (b) hold the general meeting within 2 months of the members' request.
- 18.3 The percentage of votes that members have (in clause 18.2) is to be worked out as at midnight before the members request the meeting.
- 18.4 The members who make the request for a general meeting must:
- (a) state in the request any resolution to be proposed at the meeting,
  - (b) sign the request, and
  - (c) give the request to the Company.
- 18.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

### 19. General meetings called by members

- 19.1 If the directors do not call the meeting within 21 days of being requested under clause 18.2, 50% or more of the members who made the request may call and arrange to hold a general meeting.
- 19.2 To call and hold a meeting under clause 19.1 the members must:
- (a) as far as possible, follow the procedures for general meetings set out in this constitution,
  - (b) call the meeting using the list of members on the Company's members' register, which the Company must provide to the members making the request for a general meeting to be held at no cost to those members, and
  - (c) hold the general meeting within three months after the request was given to the Company.

CONSTITUTION OF MUSICA VIVA AUSTRALIA  
Adopted 21 May 2016

- 19.3 The Company must pay the members who request the general meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

**20. Annual general meeting**

- 20.1 A general meeting, called the annual general meeting, must be held at least once in every calendar year.
- 20.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
- (a) a review of the Company's activities,
  - (b) a review of the Company's finances,
  - (c) any auditor's report,
  - (d) the election of directors, and
  - (e) the appointment and payment of auditors, if any.
- 20.3 Before or at the annual general meeting, the directors must give information to the members on the Company's activities and finances during the period since the last annual general meeting.
- 20.4 The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

**21. Notice of general meetings**

- 21.1 Notice of a general meeting must be given to:
- (a) each member entitled to vote at the meeting,
  - (b) each director, and
  - (c) the auditor (if any).
- 21.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 21.3 Subject to clause 21.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand, or
  - (b) for any other general meeting, members with at least 70% of the votes that may be cast at the meeting agree beforehand.
- 21.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director,
  - (b) appoint a director in order to replace a director who was removed, or
  - (c) remove an auditor.
- 21.5 Notice of a general meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this),
  - (b) the general nature of the meeting's business,
  - (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution,
  - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
    - i. the proxy does not need to be a member,

CONSTITUTION OF MUSICA VIVA AUSTRALIA  
Adopted 21 May 2016

- ii. the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
  - iii. the proxy form must be delivered to the Company at least 48 hours before the meeting.
- 21.6 If a general meeting is adjourned for one month or more, the members must be given new notice of the resumed meeting.

**22. Quorum at general meetings**

- 22.1 For a general meeting to be held, at least 10 members (a quorum) must be present (in person, or by duly appointed proxy, or attorney, or representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a proxy, attorney or representative of more than one member).
- 22.2 No business may be conducted at a general meeting if a quorum is not present.
- 22.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson of the general meeting specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week
  - (b) if the time is not specified – the same time, and
  - (c) if the place is not specified – the same place.
- 22.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

**23. Auditor's right to attend meetings**

- 23.1 The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 23.2 The Company must give the auditor (if any) any communications relating to the general meeting that a member is entitled to receive.

**24. Representatives of members**

- 24.1 An incorporated member may appoint as a representative:
- (a) one individual to represent the member at meetings and to sign circular resolutions under clause 31, and
  - (b) the same individual or another individual for the purpose of being eligible to be appointed or elected as a director.
- 24.2 The appointment of a representative by a member must:
- (a) be in writing,
  - (b) include the name of the representative,
  - (c) be signed on behalf of the member, and
  - (d) be given to the Company or, for representation at a general meeting, be given to the chairperson before the meeting starts.
- 24.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 24.4 The appointment may be standing (ongoing).

## **25. Using technology to hold meetings**

- 25.1 The Company may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 25.2 Anyone using this technology is taken to be present in person at the meeting.

## **26. Chairperson for general meetings**

- 26.1 The elected chairperson is entitled to chair general meetings.
- 26.2 The members present and entitled to vote at a general meeting may choose a director or member to be the chairperson for that meeting if:
  - (a) there is no elected chairperson, or
  - (b) the elected chairperson is not present within 30 minutes after the starting time set for the meeting, or
  - (c) the elected chairperson is present but says they do not wish to act as chairperson of the meeting.

## **27. Role of the chairperson**

- 27.1 The chairperson of a general meeting is responsible for the conduct of the general meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to, or of, the auditor (if any)).
- 27.2 The chairperson does not have a casting vote.

## **28. Adjournment of meetings**

- 28.1 If a quorum is present, a general meeting must be adjourned if a majority of members present direct the chairperson of the meeting to adjourn it.
- 28.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## **Members' resolutions and statements**

### **29. Members' resolutions and statements**

- 29.1 Members with at least 20% of the votes that may be cast on a resolution may give:
  - (a) written notice to the Company of a resolution they propose to move at a general meeting (members' resolution), and/or
  - (b) a written request to the Company that the Company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (members' statement).
- 29.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 29.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 29.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 29.5 The percentage of votes that members have (as described in clause 29.1) is to be worked out as at midnight before the notice or request is given to the Company.
- 29.6 If the Company has been given notice of a members' resolution under clause 29.1(a), the resolution must be considered at the next general meeting held more than two months after the notice is given.

29.7 This clause does not limit any other right that a member has to propose a resolution at a general meeting.

**30. Company must give notice of proposed resolution or distribute statement**

30.1 If the Company has been given a notice or request under clause 29:

- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with the notice of the general meeting referred to in clause 29.6, it must do so at the Company's cost, or
- (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with the notice of the general meeting referred to in clause 29.6, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a general meeting, the members may pass a resolution that the Company will pay these expenses.

30.2 The Company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:

- (a) it is more than 1 000 words long,
- (b) the directors consider it may be defamatory,
- (c) clause 30.1(b) applies, and the members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
- (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the members.

**31. Circular resolutions of members**

31.1 Subject to clause 31.3, the directors may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).

31.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.

31.3 Circular resolutions cannot be used:

- (a) for a resolution to remove an auditor, appoint a director or remove a director, or
- (b) where the Corporations Act or this constitution requires a meeting to be held.

31.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 31.5 or clause 31.6.

31.5 Members may sign:

- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
- (b) separate copies of that document, as long as the wording is the same in each copy.

31.6 The Company may send a circular resolution by email to members and members may agree by sending a reply email to that effect.

- 31.7 A circular resolution is passed when the last member signs or otherwise agrees to the resolution in the manner set out in clause 31.5 or clause 31.6.

## Voting at general meetings

### 32. How many votes a member has

- 32.1 Each member, including honorary life members, has one vote.

### 33. Challenge to member's right to vote

- 33.1 Only a member or the chairperson of a general meeting may challenge a person's right to vote at the general meeting, and they may only challenge at that meeting.
- 33.2 If a challenge is made under clause 33.1, the chairperson of the general meeting must decide whether or not the person may vote. The chairperson's decision is final.

### 34. How voting is carried out

- 34.1 Voting must be conducted and decided by:
- (a) a show of hands,
  - (b) a vote in writing, or
  - (c) another method chosen by the chairperson of the general meeting that is fair and reasonable in the circumstances.
- 34.2 Before a vote is taken, the chairperson of the general meeting must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 34.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 34.4 The chairperson of the general meeting and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### 35. When and how a vote in writing must be held

- 35.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands on the resolution at a general meeting by:
- (a) at least five members present,
  - (b) members present with at least 10% of the votes that may be cast on the resolution (worked out as at the midnight before the vote in writing is demanded), or
  - (c) the chairperson of the general meeting.
- 35.2 A vote in writing must be taken when and how the chairperson directs, unless clause 35.3 applies.
- 35.3 A vote in writing must be held immediately if it is demanded under clause 35.1:
- (a) for the election of a chairperson under clause 26.2, or
  - (b) to decide whether to adjourn the meeting.
- 35.4 A demand for a vote in writing may be withdrawn.

### 36. Appointment of proxy

- 36.1 A member may appoint a proxy to attend and vote at a general meeting on their behalf.
- 36.2 A proxy does not need to be a member.
- 36.3 A proxy appointed to attend and vote for a member has the same rights as the member to:

CONSTITUTION OF MUSICA VIVA AUSTRALIA  
Adopted 21 May 2016

- (a) speak at the meeting,
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment),  
and
  - (c) join in to demand a vote in writing under clause 35.1.
- 36.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address,
  - (b) the Company's name,
  - (c) the proxy's name or the name of the office held by the proxy, and
  - (d) the meeting(s) at which the appointment may be used.
- 36.5 A proxy appointment may be standing (ongoing).
- 36.6 Proxy forms must be received by the Company at the address stated in the notice under clause 21.5(d) or at the Company's registered address at least 48 hours before a meeting.
- 36.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 36.8 Unless the Company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies,
  - (b) is mentally incapacitated,
  - (c) is declared bankrupt,
  - (d) revokes the proxy's appointment, or
  - (e) revokes the authority of a representative or agent who appointed the proxy.
- 36.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

### **37. Voting by proxy**

- 37.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 37.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote,
  - (b) if the way they must vote is specified on the proxy form, must vote that way,  
and
  - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

## **Directors**

### **38. Number of directors**

- 38.1 The Company must have at least three directors and no more than eight directors (or such higher number as resolved by the directors from time to time). No more than 50% of the directors may have their primary place of residence in any one State or Territory of Australia.

### **39. Election and appointment of directors**

CONSTITUTION OF MUSICA VIVA AUSTRALIA  
Adopted 21 May 2016

- 39.1 Apart from directors appointed under clause 39.4, and subject to clause 39.3, the members may elect a director by a resolution passed in a general meeting.
- 39.2 Each of the directors must be appointed by a separate resolution, unless:
- (a) the members present have first passed a resolution that the appointments may be voted on together, and
  - (b) no votes were cast against that resolution.
- 39.3 A person is only eligible for election as a director if they:
- (a) are a member, or a representative of a member (appointed under clause 24),
  - (b) are nominated by the nominating committee,
  - (c) give the Company their signed consent to act as a director, and
  - (d) are not ineligible to be a director under the Corporations Act or the ACNC Act.
- 39.4 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (a) is a member, or a representative of a member (appointed under clause 24),
  - (b) gives the Company their signed consent to act as a director, and
  - (c) is not ineligible to be a director under the Corporations Act or the ACNC Act.
- 39.5 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

#### **40. Election of chairperson**

The directors must elect a director as the Company's elected chairperson. In the case of a tied vote, the longest serving director (and, if more than one, eldest director) will have the casting vote.

#### **41. Term of office**

- 41.1 At each annual general meeting any director appointed by the directors to fill a casual vacancy or as an additional director must retire.
- 41.2 Other than for a director appointed under clause 39.5, a director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the third annual general meeting after that meeting.
- 41.3 A director who retires at an annual general meeting under clause 41.1, or whose term will expire at the end of an annual general meeting under clause 41.2, may nominate for election or re-election (as applicable).

#### **42. When a director stops being a director**

A director stops being a director if they:

- (a) give written notice of resignation as a director to the Company,
- (b) die,
- (c) are removed as a director by a resolution of the members,
- (d) stop being a member,
- (e) are a representative of a member, and that member stops being a member,
- (f) are a representative of a member, and the member notifies the Company that the representative is no longer a representative,



- (g) are absent for 3 consecutive directors' meetings without approval from the directors,
- (h) become ineligible to be a director under the Corporations Act or the ACNC Act, or
- (i) retire under clause 41.1 or their term expires under clause 41.2 unless elected or re-elected (as applicable) as a director at the relevant annual general meeting.

## **Powers of directors**

### **43. Powers of directors**

- 43.1 The directors are responsible for overseeing the management of the activities of the Company to achieve the purposes of the Company set out in clause 6.
- 43.2 The directors may use all the powers of the Company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- 43.3 The directors must decide on the responsible financial policies and procedures of the Company including:
  - (a) any suitable written delegations of power under clause 44, and
  - (b) how investments will be managed.
- 43.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a general meeting.

### **44. Delegation of directors' powers**

- 44.1 The directors may delegate any of their powers and functions as permitted by law and in accordance with board delegation of authority policy (if any) to a committee, a director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate.
- 44.2 The delegation must be recorded in the Company's minute book.

### **45. Payments to directors**

- 45.1 The Company must not pay fees to a director for acting as a director.
- 45.2 The Company may:
  - (a) pay a director for work they do for the Company, other than as a director, provided that:
    - i. the proposed work has been considered by the Board and the Board has determined to approve the work being undertaken prior to the work's commencement, and
    - ii. without limiting clause 45.2(a)(i), any conflict of duty or interest has been declared by the director and considered by the Board prior to the work's commencement, and
    - iii. the amount invoiced is no more than a reasonable fee for the work done, or
  - (b) reimburse a director for reasonable expenses properly incurred by the director in connection with the affairs of the Company.
- 45.3 Any payment made under clause 45.2(a) must be approved by the directors.

- 45.4 The Company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

**46. Execution of documents**

The Company may execute a document without using a common seal if the document is signed by:

- (a) two directors,
- (b) a director and the secretary, or
- (c) any other person authorised by the directors to execute the document for and on behalf of the Company.

## Directors' meetings

**47. When the directors meet**

- 47.1 The directors may decide how often, where and when they meet.

**48. Calling directors' meetings**

- 48.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 48.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

**49. Chairperson for directors' meetings**

- 49.1 The elected chairperson is entitled to chair directors' meetings.
- 49.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the elected chairperson is:
- (a) not present within 30 minutes after the starting time set for the meeting, or
  - (b) present but does not want to act as chairperson of the meeting.
- In the case of a tied vote, the longest serving director (and, if more than one, eldest director) will have the casting vote.

**50. Quorum at directors' meetings**

- 50.1 Unless the directors determine otherwise, the quorum for a directors' meeting is 50% of directors (rounded down to the nearest whole number of directors) including at least two directors whose primary place of residence is in different States or Territories of Australia.
- 50.2 A quorum must be present for the whole directors' meeting.

**51. Using technology to hold directors' meetings**

- 51.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 51.2 The directors' agreement may be a standing (ongoing) one.
- 51.3 A director may only withdraw their consent within a reasonable period before the meeting.

## **52. Passing directors' resolutions**

52.1 A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

## **53. Circular resolutions of directors**

53.1 The directors may pass a circular resolution without a directors' meeting being held.

53.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 53.3 or clause 53.4.

53.3 Each director may sign:

- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
- (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

53.4 The Company may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect.

53.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 53.3 or clause 53.4.

## **Secretary**

### **54. Appointment and role of secretary**

54.1 The Company must have at least one secretary, who may also be a director.

54.2 A secretary must be appointed by the directors (after giving the Company their signed consent to act as secretary) and may be removed by the directors.

54.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.

54.4 The role of the secretary includes:

- (a) maintaining a register of members, and
- (b) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.

## **Minutes and records**

### **55. Minutes and records**

55.1 The Company must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of general meetings,
- (b) minutes of circular resolutions of members,
- (c) a copy of a notice of each general meeting, and
- (d) a copy of a members' resolution or a members' statement distributed to members under clause 30.

55.2 The Company must, within one month, make and keep minutes of proceedings and resolutions of directors' meetings (including meetings of any committees).

55.3 The Company must give a member access to the records set out in clause 55.1 by making the records available for inspection at the Company's registered office at all reasonable times.

CONSTITUTION OF MUSICA VIVA AUSTRALIA  
Adopted 21 May 2016

- 55.4 The directors may authorise a member to inspect other records of the Company, including records referred to in clause 55.2 and clause 56.1.
- 55.5 The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
  - (b) the chairperson of the next meeting.
- 55.6 The Company must enter in its minutes book resolutions passed by members or directors without a meeting, within one month of being passed.

**56. Financial and related records**

- 56.1 The Company must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 56.2 The Company must also keep written records that correctly record its operations.
- 56.3 The Company must retain its records for at least 7 years.
- 56.4 The directors must take reasonable steps to ensure that the Company's records are kept safe.

## By-laws

**57. By-laws**

- 57.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 57.2 Members and directors must comply with by-laws as if they were part of this constitution.

## Gift Fund

**58. The Gift Fund**

- 58.1 The Company may maintain a fund or funds (**Gift Fund**):
- (a) to which gifts of money or property for the Company's charitable purposes are to be made;
  - (b) to which contributions (that are not gifts) but which are described in items 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fund-raising event held for the Company's charitable purposes are to be made;
  - (c) to which contributions (that are not gifts) but which can be made to the Gift Fund without adversely affecting the Company's gift deductible recipient status are to be made;
  - (d) to which any money received by the Company because of such gifts or contributions is to be credited; and
  - (e) that does not receive any other money or property.

**59. Limits on use of the Gift Fund**

- 59.1 The Company must use assets of the Gift Fund only for the Company's charitable purposes.

#### **60. Maintaining the Gift Fund**

In maintaining the Gift Fund the Company will:

- (a) ensure that at all times the fund is maintained and used for the Company's charitable purposes,
- (b) ensure that the Gift Fund is operated separately and maintained with separate books of account from the Company's general accounts,
- (c) have in place appropriate procedures to ensure only and all proper amounts of money and property are credited to the Gift Fund,
- (d) ensure any money or property which is incorrectly received into the Gift Fund will be removed from the Gift Fund as soon as practicable with the accounts for the Gift Fund adjusted and noted accordingly,
- (e) keep records in English or readily accessible and easily convertible into English which:
  - i. record and explain all transactions and other acts the Gift Fund and/or the Company engages in which is relevant to the Company's status as a gift deductible recipient, and
  - ii. show that each of the following assets of the Gift Fund is used by the Gift Fund and/or the Company only for the Company's charitable purposes:
    - 1) gifts of money or property for the Company's charitable purposes,
    - 2) contributions (that are not gifts) but which are described in items 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fund-raising event held for the Company's charitable purposes,
    - 3) contributions (that are not gifts) but which can be made to the Gift Fund without adversely affecting the Company's gift deductible recipient status, and
    - 4) money received by the Gift Fund because of such gifts or contributions,
- (f) keep the records referred in clause 60(e) for at least five years after the completion of such transactions or acts to which they relate, and
- (g) at all times ensure it complies with the requirements of all laws and regulations in existence from time to time or any guidelines issued by the Australian Taxation Office in relation to gift funds or such other government authority overseeing the administration of gift funds.

#### **61. Winding up of the Gift Fund**

61.1 At the first occurrence of either the winding up of the Gift Fund or the Company ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act any surplus assets of the Gift Fund must be transferred to a fund, authority or institution which is an eligible transferee:

- (a) listed on the Register of Cultural Organisations maintained under the Tax Act,
- (b) that has charitable purposes similar to, or inclusive of, the purposes in clause 6, and
- (c) that also prohibits the distribution of any surplus assets to its members to at least the same extent as the Company.

61.2 The identity of the eligible transferee must be decided by the directors.

## **62. Surplus assets not to be distributed to members**

If the Gift Fund is wound up, any surplus assets must not be distributed to a member or a former member, unless that member or former member is an eligible transferee described in clause 61.1.

## **Deductible Gift Recipient Status**

### **63. Maintaining Deductible Gift Recipient status**

- 63.1 If the Company is endorsed as a deductible gift recipient in its own right, then to maintain this status, the Company will:
- (a) ensure that at all times it uses the following solely for the purposes of the Company set out in clause 6:
    - (i) gifts of money or property for the Company's charitable purposes,
    - (ii) contributions (that are not gifts) but which are described in items 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fund-raising event held for the objects specified in clause 6, and
    - (iii) money received by the Company because of such gifts or contributions,
  - (b) keep records in English or readily accessible and easily convertible into English which:
    - (i) record and explain all transactions and other acts the Company engages in which is relevant to the Company's status as a gift deductible recipient, and
    - (ii) show that each of the following is used by the Company only for the purposes of the Company set out in clause 6:
      - a. gifts of money or property for the Company's charitable purposes;
      - b. contributions (that are not gifts) but which are described in items 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fund-raising event held for the objects specified in clause 6, and
      - c. money received by the Gift Fund because of such gifts or contributions,
  - (c) keep the records referred in clause 63.1(b) for at least five years after the completion of such transactions or acts to which they relate, and
  - (d) at all times ensure it complies with the requirements of all laws and regulations in existence from time to time or any guidelines issued by the Australian Taxation Office or other such authority in relation to gift deductible recipient status.

### **64. Winding up or revocation of endorsement**

- 64.1 If the Company is endorsed as a gift deductible recipient in its own right, then at the first occurrence of either the winding up of the Company or the Company ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act, the Company must transfer to a fund, authority or institution which is an eligible transferee any surplus:
- (a) gifts of money or property made to the Company for the Company's charitable purposes,

CONSTITUTION OF MUSICA VIVA AUSTRALIA  
Adopted 21 May 2016

- (b) contributions made to the Company (that are not gifts) but which are described in items 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fund-raising event held for the Company's charitable purposes, and
  - (c) money received by the Company because of such gifts or contributions.
- 64.2 The identity of the eligible transferee must be decided by the directors but the eligible transferee must:
- (a) be listed on the Register of Cultural Organisations maintained under the Tax Act,
  - (b) have charitable purposes similar to, or inclusive of, the purposes in clause 6, and
  - (c) also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company.

**65. Surplus assets not to be distributed to members**

If the Company is wound up, any surplus assets must not be distributed to a member or a former member, unless that member or former member is an eligible transferee described in clause 64.2.

## Notice

**66. What is notice**

- 66.1 Anything written to or from the Company under any clause in this constitution is written notice and is subject to clauses 67 to 69, unless specified otherwise.
- 66.2 Clauses 67 to 69 do not apply to a notice of proxy appointment received under clause 36.6.

**67. Notice to the company**

Written notice or any communication under this constitution may be given to the Company, the directors or the secretary by:

- (a) delivering it to the Company's registered office,
- (b) posting it to the Company's registered office or to another address chosen by the Company for notice to be provided,
- (c) sending it to an email address or other electronic address notified by the Company to the members as the Company's email address or other electronic address, or
- (d) sending it to the fax number notified by the Company to the members as the Company's fax number.

**68. Notice to members**

- 68.1 Written notice or any communication under this constitution may be given to a member:
  - (a) in person,
  - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices,
  - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any),

- (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any), or
  - (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 68.2 If the Company does not have an address for the member, the Company is not required to give notice in person.

#### **69. When notice is taken to be given**

A notice:

- (a) delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered,
- (b) sent by post, is taken to be given on the fifth business day (if posted within Australia to an address in Australia) or the seventh business day (if posted from one country to another) after it is posted with the correct payment of postage costs,
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 68.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

## **Financial year**

#### **70. Company's financial year**

The Company 's financial year is from 1 January to 31 December, unless the directors pass a resolution to change the financial year.

## **Indemnity, insurance and access**

#### **71. Indemnity**

- 71.1 The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.
- 71.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 71.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the Company is not precluded by law (including the Corporations Act) from doing so, and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 71.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.



## 72. Insurance

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.

## 73. Directors' access to documents

- 73.1 A director has a right of access to the financial records of the Company at all reasonable times.
- 73.2 If the directors agree, the Company must give a director or former director access to:
- (a) certain documents, including documents provided for or available to the directors, and
  - (b) any other documents referred to in those documents.

## Winding up

### 74. Surplus assets not to be distributed to members

If the Company is wound up, any surplus assets must not be distributed to a member or a former member, unless that member or former member is a charity described in clause 75.1.

### 75. Distribution of surplus assets

- 75.1 Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets that remain after the Company is wound up must be distributed to one or more charities:
- (a) with charitable purposes similar to, or inclusive of, the purposes of the Company set out in clause 6, and
  - (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company.
- 75.2 The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the Company may apply to the Supreme Court to make this decision.

## Definitions and interpretation

### 76. Definitions

- 76.1 In this constitution:
- ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth),
  - Company** means the company referred to in clause 1,
  - Corporations Act** means the *Corporations Act 2001* (Cth),
  - director** means a director of the Company,
  - elected chairperson** means a person elected by the directors to be the Company's chairperson under clause 40,
  - eligible transferee** means a fund, authority or institution which is charitable at law, and to which gifts can be deducted under Division 30 of the Tax Act,

CONSTITUTION OF MUSICA VIVA AUSTRALIA  
Adopted 21 May 2016

**ex officio member** means a president of a Musica Viva State Committee admitted as a member under clause 13.5,

**general meeting** means a meeting of members, and includes the annual general meeting under clause 20.1,

**honorary life member** means a member awarded life membership of the Company under clause 11.3,

**member** means a member of the Company,

**member present** means, in connection with a general meeting, a member present (or taken to be present under this constitution) in person, or by a duly appointed proxy, attorney or representative at the venue or venues for the meeting,

**Musica Viva State Committee** means a volunteer committee established in an Australian state or territory in accordance with the Musica Viva State Committee Guidelines

**nominating committee** means the nominating committee of the Company,

**registered charity** means a charity that is registered under the ACNC Act,

**secretary** means the secretary of the Company,

**special resolution** means a resolution:

- i. of which notice has been given under clause 21.5(c), and
- ii. that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution,

**surplus assets** means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up, and

**Tax Act** means *Income Tax Assessment Act 1997* (Cth).

#### **77. Reading this constitution with the Corporations Act**

- 77.1 The replaceable rules set out in the Corporations Act do not apply to the Company.
- 77.2 While the Company is a registered charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
- 77.3 If the Company is not a registered charity (even if it remains a charity), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.
- 77.4 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

#### **78. Interpretation**

- 78.1 In this constitution:
- (a) the words ‘including’, ‘for example’, or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
  - (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).