

# Constitution

of

## The West Australian Music Industry Association Incorporated



The West Australian Music Industry Association Incorporated

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# The West Australian Music Industry Association Incorporated

## Constitution

### 1 Name

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The name of the incorporated association is The West Australian Music Industry Association Incorporated (**WAM**).

### 2 Objects

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The objects of WAM are:

- (a) To promote and support contemporary West Australian music and musicians in order to create a thriving environment in Western Australia to enhance opportunities to forge a sustainable career in music. The contemporary focus of WAM is broadly defined as including music and musicians across any genre where the intent is a contemporary rendition.
- (b) To promote and support the contemporary West Australian music sector, including by providing support and community to the broader music sector, such as music producers, engineers, studio owners and music retailers.
- (c) To advocate for and represent the participants in the local music industry in the public, private and business sectors on all matters which further the development of artistic and performance pursuits.
- (d) To promote and encourage:
  - (1) industry standards and ethical practices;
  - (2) creation, production, performance and recording opportunities for local Western Australian musicians; and
  - (3) public awareness of the music industry by the dissemination of information to the public of West Australian music and all its facets.
- (e) To organise and promote training opportunities for local musicians and members of WAM through workshops, seminars and courses.
- (f) To provide a central resource facility for local music participants and members of WAM.
- (g) To provide a forum for local music participants and members of WAM to raise issues of importance to WAM and to the original music industry in Western Australia at large.
- (h) To curate, create or host recognition programmes that further the activities of West Australian musicians and bring West Australian music to the attention of the Western Australian public and beyond.
- (i) To seek representation on committees and Boards of any organisation, body or association which will further the interests of WAM as decided by the executive of WAM.
- (j) To foster and promote good relations between WAM, local music participants and any other similar organisation or group involved in the provision and promotion of music, performing arts and entertainment.

### 3 Powers

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WAM may do all things necessary or convenient for carrying out its objects and in particular may:

- (a) purchase, sell, mortgage, lease, exchange, improve, manage, develop or otherwise acquire or dispose of any real or personal property or any rights or privileges for the purposes of WAM;
- (b) establish funds for carrying out the objects of WAM and to borrow, raise or secure payment of the money for any object of WAM in such manner and upon such terms as may be deemed appropriate;
- (c) conduct appeals for funds and accept donations, whether being real or personal property, and devices and bequests under testamentary dispositions and generally to raise funds by public subscription and any other means as may from time to time be approved by the Board;
- (d) invest in any securities or otherwise to deal with the money of WAM not immediately required for the purposes of WAM, in any manner authorised by law, as may from time to time be determined by the Board;
- (e) hold and administer property on trust;
- (f) borrow money by way of loan or overdraft or by the issue or execution of mortgages, charges, bonds, debentures or other securities over all or any of the property of WAM as may be deemed necessary and to liquidate, redeem or pay off any obligations or securities so created;
- (g) appoint delegates or representatives to other associations, societies and bodies and to appoint or elect sub-committees and standing committees as it sees fit;
- (h) co-opt persons as required;
- (i) appoint an auditor as required (but the auditor cannot be a member of WAM);
- (j) approve the membership of any persons eligible to be a member of WAM;
- (k) make by-laws for the conduct of the affairs of WAM and to perform all such acts and responsibilities for the attainment of the objects of WAM;
- (l) appoint, employ, contract or hire employees, staff or other persons to work on behalf of WAM or for any object of WAM in such a manner and upon such terms as may be deemed appropriate by the Board;
- (m) determine from time to time the annual subscription or fee for membership;
- (n) take out insurance, indemnity or guarantees as are necessary to protect WAM or any member;
- (o) draw, accept and negotiate cheques, bills of exchange, promissory notes and other negotiable instruments;
- (p) do all things incidental or conducive to furthering any of the above objects; and
- (q) exercise all powers conferred on WAM by the Act.

## **4 Members**

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### **4.1 Eligibility for membership**

Any person who supports the objects or purpose of WAM is eligible to apply to become an ordinary member, an associate member or a life member of WAM.

### **4.2 Applying for membership**

- (a) A person who wants to become a member must apply in writing to WAM.
- (b) The applicant must specify in the application the class of membership to which the application relates.

### **4.3 Dealing with membership applications**

- (a) The Board must consider each application for membership of WAM and decide whether to accept or reject the application.
- (b) Subject to clause 4.3(c), the Board must consider applications in the order in which they are received by WAM.
- (c) The Board must not accept an application unless the applicant:
  - (1) is eligible under clause 4.1; and
  - (2) has applied under clause 4.2.

### **4.4 Becoming a member**

An applicant for membership of WAM becomes a member when:

- (a) the Board accepts the application; and
- (b) the applicant pays any membership fees payable to WAM under clause 4.9.

### **4.5 Classes of membership**

- (a) WAM consists of ordinary members, life members and associate members.
- (b) The Board may approve multiple classes of associate or ordinary membership, including organisation membership, senior membership and honorary membership.
- (c) A person can only have one class of membership.
- (d) Subject to clause 4.5(e), ordinary members and life members have full voting rights and any other rights conferred on members by this Constitution or approved by resolution at a General Meeting or determined by the Board.
- (e) A person who is an ordinary member or a life member:
  - (1) only obtains the right to vote after they have been a member for one calendar month; and
  - (2) ceases to have the right to vote if their membership fee is not paid by its due date (but regains the ability to vote one calendar month after that fee is paid).
- (f) An associate member has the rights referred to in clause 4.5(d) other than full voting rights.
- (g) The number of members of any class is not limited unless otherwise approved by resolution at a General Meeting.

## **4.6 Voting**

- (a) Subject to clause 4.5(e), ordinary members and life members may cast one vote in any ballot, election or vote in which a member is entitled to participate.
- (b) Any member that is an organisation may appoint in writing a natural person, whether or not he or she is a member, to represent it at a particular General Meeting or at all General Meetings.
- (c) Where an appointment made under clause 4.6(b) is made by a body corporate, the appointment must be made by a resolution of the board or other governing body of the body corporate concerned, a copy of which resolution must be lodged with the Secretary.
- (d) A person appointed under clause 4.6(b) to represent a member that is an organisation is deemed for all purposes to be a member until that appointment is revoked by the organisation or, in the case of an appointment in respect of a particular General Meeting and the appointment is not otherwise revoked, the conclusion of that General Meeting.
- (e) Any ordinary or life member (“the appointing member”) may appoint in writing another member who is a natural person to be the proxy of the appointing member to attend and vote on behalf of the appointing member at General Meetings.
- (f) All proxies must be:
  - (1) received at the registered address of WAM, or at another place or electronic address specified for that purpose in the notice convening the meeting before the time specified in the notice not later than 24 hours before the General Meeting; and
  - (2) in a form as provided with the notice convening the meeting or otherwise as determined by the Board from time to time.
- (g) If no instructions are given to the proxy, the proxy may vote on behalf of the member in any matter as the proxy sees fit, but if specific instructions are given by the member then the proxy must vote in accordance with them.
- (h) Proxies not complying with clause 4.6(f) or which have not been properly completed will be deemed invalid.

## **4.7 Membership not transferable**

Unless otherwise provided by the terms of membership, membership of WAM is personal to the member and is not transferable.

## **4.8 When membership ceases**

- (a) A person ceases to be a member when any of the following takes place:
  - (1) for a member who is an individual, the individual dies;
  - (2) for a member who is a body corporate, the body corporate is wound up;
  - (3) the person resigns from WAM under clause 4.10;
  - (4) the person is expelled from WAM under clause 19; or
  - (5) the person ceases to be a member under clause 4.9(e).
- (b) The Secretary must keep a record, for at least one year after a person ceases to be a member, of:
  - (1) the date on which the person ceased to be a member; and
  - (2) the reason why the person ceased to be a member.

## **4.9 Membership fees**

- (a) The Board must determine the entrance fee (if any) and the annual membership fee (if any) to be paid for membership of WAM.
- (b) The fees determined under clause 4.9(a) may be different for different classes of membership (including, for the avoidance of doubt, any classes of associate or ordinary membership approved by the Board).
- (c) A member must pay the annual membership fee to the Treasurer, or an employee of WAM nominated by the Treasurer or another person authorised by the Board to accept payments, by the date (the due date) determined by the Board.
- (d) The Board shall give all members not less than one month's notice of the membership fee payable and the date by which the subscription is due.
- (e) If a member has not paid the annual membership fee within the period of 3 months after the due date, the member ceases to be a member on the expiry of that period.
- (f) If a person who has ceased to be a member under clause 4.9(e) offers to pay the annual membership fee after the period referred to in that clause has expired:
  - (1) the Board may, at its discretion, accept that payment; and
  - (2) if the payment is accepted, the person's membership is reinstated from the date the payment is accepted.

## **4.10 Resignation**

- (a) A member may resign from membership of WAM by giving written notice of the resignation to the Secretary or by leaving it at WAM's registered office.
- (b) The resignation takes effect:
  - (1) when the Secretary receives the notice or when it is received by WAM at its registered office; or
  - (2) if a later time is stated in the notice, at that later time.
- (c) A person who has resigned from membership of WAM remains liable for any fees that are owed to WAM (the owed amount) at the time of resignation.
- (d) The owed amount may be recovered by WAM in a court of competent jurisdiction as a debt due to WAM.

## **4.11 Right to inspect certain records**

All members of WAM may at any reasonable time inspect without charge the Constitution, the register of members and the record of office holders of WAM.

## **5 Register of members**

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- (a) The Secretary, or another person authorised by the Board, is responsible for the requirements imposed on WAM under section 53 of the Act to maintain the register of members and record in that register any change in the membership of WAM.
- (b) In addition to the matters referred to in section 53(2) of the Act, the register of members must include the class of membership to which each member belongs and the date on which each member became a member.
- (c) The register of members must be kept at a place determined by the Board.



- (d) A member who wishes to inspect the register of members must contact the Secretary to make the necessary arrangements.
- (e) If:
  - (1) a member inspecting the register of members wishes to make a copy of, or take an extract from, the register under section 54(2) of the Act; or
  - (2) a member makes a written request under section 56(1) of the Act to be provided with a copy of the register of members,

the Board may require the member to provide a statutory declaration setting out the purpose for which the copy or extract is required and declaring that the purpose is connected with the affairs of WAM.

## **6 Record of Board Members**

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The record of Board Members and other persons authorised to act on behalf of WAM that is required to be maintained under section 58(2) of the Act must be kept at a place determined by the Board.

## **7 Board**

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### **7.1 General**

- (a) Subject to the Act, the Constitution and final authority of the members at the Annual General Meeting, the management of WAM and its business, property and affairs is vested in the Board.
- (b) The Board must consist of not more than 8 Ordinary Board Members and not more than 2 Selected Board Members.

### **7.2 The Board's role**

- (a) The Board is responsible for the overall governance and strategic direction of WAM and for delivering accountable corporate performance in accordance with WAM's goals and objectives. To that end, the functions of the Board include:
  - (1) the development of the strategic direction of the organisation in collaboration with senior executives;
  - (2) overseeing the management of the business and affairs of WAM;
  - (3) developing policies of WAM;
  - (4) ensuring management implements the policies of WAM; and
  - (5) overseeing and ensuring resources of WAM are used in accordance with this Constitution.
- (b) The Board shall be responsible to WAM in General Meetings for giving effect to the objects of WAM as set out in this Constitution and for carrying on its everyday business, and without limitation to the foregoing, the Board shall have the power to:
  - (1) fill casual vacancies on the Board until the next Annual General Meeting;
  - (2) appoint committees for such purposes as it seems fit and, subject to clause 8.10, may delegate any of its powers or duties to such committees;

- (3) at its election, vacate the position of any Board Member absent for three consecutive Board Meetings without leave of absence;
- (4) adopt rules and procedures as to the conduct and mode of debate at General Meetings;
- (5) determine membership fees and admission fees; and
- (6) make policies for the orderly and proper management of the affairs of WAM, provided they are not inconsistent with this Constitution.

## **8 Board Members**

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### **8.1 Nomination**

- (a) Unless the Board determines otherwise, nomination of Ordinary Board Members shall be made in writing at least 35 days prior to WAM's Annual General Meeting
- (b) The nomination of an Ordinary Board Member shall not be accepted:
  - (1) without the nominee's consent; and
  - (2) unless the nominee has been a member for at least 3 months.
- (c) An Ordinary Board Member must be a member.
- (d) The Board may interview a person who has been nominated as an Ordinary Board Member and may make a recommendation to members based on an assessment of that person's skills and qualifications.

### **8.2 Election**

- (a) Subject to clauses 7.1(b) and 8.1, WAM may, at a General Meeting fill all vacant Ordinary Board Member positions (including those to become vacant as a result of Ordinary Board Members resigning pursuant to clause 8.4(b)).
- (b) Where an election is to be held, the Board shall appoint a member to act as the returning officer for the election and the returning officer shall have absolute discretion to allow any discrepancy in procedure which the returning officer regards as insubstantial. When the election is completed, the returning officer shall convey the results to the chairperson of the General Meeting (whether or not the meeting has concluded), and the chairperson shall declare the poll.
- (c) Voting for Board Members shall be by secret ballot.
- (d) If the number of members nominated for a position as a Board Member is equal to or less than the number of vacant Ordinary Board Member positions (including those to become vacant as a result of Ordinary Board Members resigning pursuant to clause 8.4(b)), the chairperson of the meeting:
  - (1) must declare each of those members to be elected to the Board; and
  - (2) may call for further nominations from the ordinary members at the meeting to fill any positions remaining unfilled after the elections under paragraph 8.2(d)(1).
- (e) If:
  - (1) the number of members nominated for a position as a Board Member is greater than the number to be elected; or
  - (2) the number of members nominated under clause 8.2(d)(2) is greater than the number of positions remaining unfilled,

the ordinary members at the meeting must vote to decide the members who are to be elected to a position as a Board Member.

- (f) A member who has been nominated for a position as a Board Member may vote in accordance with that nomination.

### **8.3 Term of office**

- (a) The term of office of a Board Member begins when the Board Member:
  - (1) is elected at an Annual General Meeting or under clause 8.4(e);
  - (2) is appointed to fill a casual vacancy under clause 8.6(a); or
  - (3) is appointed as a Selected Board Member under clause 8.6(b).
- (b) Subject to clause 8.3(c), an Ordinary Board Member may be re-elected.
- (c) A person:
  - (1) may not serve more than three terms as an Ordinary Board Member consecutively; and
  - (2) may not serve more than five terms as an Ordinary Board Member in aggregate.

### **8.4 Resignation and removal**

- (a) A Board Member may resign from the Board by giving written notice to the Secretary (or the President, if the resigning member is the Secretary).
- (b) An Ordinary Board Member:
  - (1) elected pursuant to clause 8.2 must resign from the Board no later than the second Annual General Meeting following that Board Member's last election; or
  - (2) appointed pursuant to clause 8.6(a) must retire at the second Annual General Meeting following that appointment.
- (c) A Selected Board Member must resign from the Board no later than the second Annual General Meeting following that Board Member's appointment.
- (d) The resignation takes effect when the notice is received by the Secretary or President or, if a later time is stated in the notice, at the later time.
- (e) At a General Meeting, WAM may by resolution remove a Board Member from the Board and elect a member who is eligible under clause 8.1 to fill the vacant position.
- (f) The Board may remove a member from the Board if, in the opinion of a majority of the Board, the Board Member has been guilty of conduct detrimental to the interests of WAM or the Board Member's continued membership of the Board is otherwise detrimental to the interests of WAM. The grievance procedure applies to this clause 8.4(f).
- (g) A Board Member who is the subject of a proposed resolution under clause 8.4(e) may make written representations (of a reasonable length) to the Secretary or President and may ask that the representations be provided to members.

### **8.5 When membership of the Board ceases**

A person ceases to be a Board Member if:

- (a) the person dies or otherwise ceases to be a member;
- (b) the person resigns from the Board or is removed from office under clause 8.4;
- (c) the person becomes ineligible to accept an appointment or act as a Board Member under section 39 of the Act;

- (d) the person becomes permanently unable to act as a Board Member because of a mental or physical disability; or
- (e) the Board makes the election described in clause 7.2(b)(3).

## **8.6 Filling casual vacancies and Selected Board Members**

- (a) The Board may appoint a member who is eligible under clause 8.1(c) to fill a position on the Board that has become vacant under clause 8.5.
- (b) Subject to clauses 7.1(b), the Board may appoint any person as a Selected Board Member (with Selected Board Members to be chosen on the basis of their expertise or position, with benefit to WAM the primary concern).
- (c) Selected Board Members' term of appointment may be terminated by the Board at any time, but in any case will cease no later than the second Annual General Meeting following that Board Member's appointment. The Board may reselect the same Selected Board Member(s) for subsequent terms.
- (d) Subject to the requirement for a quorum under clause 8.9, the Board may continue to act despite any vacancy in its membership.
- (e) If there are fewer Board Members than required for a quorum under clause 8.9, the Board may only act for the purposes of:
  - (1) appointing Board Members under this clause; or
  - (2) convening a General Meeting.

## **8.7 Election of Officers**

- (a) At the next Board Meeting after an Office has been vacated as a result of clause 8.7(k), the Board Members must hold an election for that Office.
- (b) Board Members who wish to be considered for an Office must notify the Secretary (or if the Office of the Secretary has been vacated, each other Board Member) at least 7 days prior to that Board Meeting.
- (c) A Board Member notifying the Secretary (or each other Board Member) in accordance with clause 8.7(b) may nominate for one Office only.
- (d) A Board Member may only hold one Office.
- (e) If there is no nomination for an Office, the chairperson of the Board Meeting may call for nominations from the Board Members at the Board Meeting.
- (f) If only one Board Member has nominated for an Office, the chairperson of the Board Meeting must declare the Board Member elected to the Office.
- (g) If more than one Board Member has nominated for an Office, the Board Members at the meeting must vote in accordance with this Constitution and the procedures that have been determined by the Board to decide who is to be elected to the Office.
- (h) Each Board Member present at the meeting may vote for one member who has nominated for the Office.
- (i) A Board Member who has nominated for an Office may vote for himself or herself.
- (j) A Board Member may be re-elected to an Office.
- (k) A Board Member who holds an Office ceases to hold that Office on the earlier of:
  - (1) two years after beginning to hold that Office; and
  - (2) when that person ceases to be a Board Member.

## 8.8 Offices

- (a) The President:
- (1) must consult with the Secretary regarding the business to be conducted at each Board Meeting and General Meeting; and
  - (2) has the powers and duties relating to convening and presiding at Board Meetings and General Meetings provided for in this Constitution and at law generally.

- (b) The Vice-President must:
- (1) assist the President at all times; and
  - (2) in the event that the President is absent from any meeting, adopt and exercise the full powers of the President.

If resolved by the Board, there can be more than one Vice-President.

- (c) The Treasurer is responsible for making sure that appropriate processes are in place to ensure:
- (1) that WAM is able to pay its debts as and when they come due;
  - (2) that any amounts payable to WAM are collected and that receipts are issued for those amounts in WAM's name; and
  - (3) that WAM complies with the relevant requirements of Part 5 of the Act.

The Treasurer is also responsible for the safe custody of WAM's financial records, financial statements and financial reports, as applicable to WAM, and carrying out any other duty given to the Treasurer under this Constitution or by the Board.

- (d) The Secretary is responsible for:
- (1) consulting with the President regarding the business to be conducted at each Board Meeting and General Meeting;
  - (2) preparing the notices required for meetings and for the business to be conducted at meetings;
  - (3) unless another member is authorised by the Board to do so, maintaining on behalf of WAM the register of members, and recording in the register any changes in the membership, as required under section 53(1) of the Act;
  - (4) maintaining on behalf of WAM an up-to-date copy of this Constitution, as required under section 35(1) of the Act;
  - (5) unless another member is authorised by the Board to do so, maintaining on behalf of WAM a record of Board Members and other persons authorised to act on behalf of WAM, as required under section 58(2) of the Act;
  - (6) ensuring the safe custody of the books of WAM, other than the financial records, financial statements and financial reports, as applicable to WAM;
  - (7) maintaining full and accurate minutes of Board Meetings and General Meetings; and
  - (8) carrying out any other duty given to the Secretary under this Constitution or by the Board.
- (e) Each Officer may delegate to an employee of WAM the exercise of any power or the performance of any duty of that person's Office other than the power to delegate and a duty imposed on the Board or that Officer by the Act or another written law.
- (f) As required under sections 42 and 43 of the Act, where a Board Member who has a material personal interest in a matter being considered at a Board Meeting that Board Member must:

- (1) disclose the nature and extent of his or her interest to the Board as soon as becoming aware of it; and
- (2) must not be present while the matter is being considered at the Board Meeting or vote on it.
- (g) Clauses 8.8(f)(1) and 8.8(f)(2) do not apply in the circumstances stated in section 42(3) and 43(2) of the Act respectively.
- (h) The Secretary must cause every disclosure made under 8.8(f) by a Board Member to be recorded in the minutes of the Board Meeting at which it is made.

## **8.9 Board Meetings**

- (a) At all Board Meetings a quorum shall consist of 5 Board Members of whom at least 2 will be Officers.
- (b) There shall be not less than 6 Board Meetings per year with not more than 3 months between consecutive meetings.
- (c) The President shall chair all Board Meetings, and in the President's absence, the Board Meeting shall be chaired by the Vice-President and in the absence of the Vice-President the Secretary.
- (d) A quorum of Board Members at any Board Meeting may adjourn the meeting to an agreed time and place.
- (e) Each Board member has one deliberative vote in relation to any resolution or question arising at a Board Meeting.
- (f) A question arising at a Board Meeting must be decided by a majority of votes, but, if there is no majority, the person presiding at the Board Meeting will have a casting vote in addition to his or her deliberative vote.
- (g) Minutes must be kept of each Board Meeting.

## **8.10 Committees**

- (a) The Board may delegate any of its powers to one or more committees consisting of at least one Board member and any other persons as the Board thinks fit, provided that at least 1 WAM employee attends each meeting of the relevant Board.
- (b) A committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions given by the Board.
- (c) The provisions of this Constitution that apply to meetings and resolutions of the Board apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee (including the requirement to keep minutes).
- (d) A quorum at a committee meeting is half the members of the Board (or as otherwise determined by the Board).

## **8.11 Chief Executive Officer**

- (a) The Board may appoint a Chief Executive Officer of WAM, for any period and on any terms as the Board resolves.
- (b) Subject to the Chief Executive Officer's employment contract, the Board may from time to time remove any person so appointed from office as Chief Executive Officer.
- (c) The Chief Executive Officer will be responsible to the Board for the management of WAM in accordance with the direction and delegations of the Board, including making offers of employment and implementing the policies of WAM as set by the Board.

- (d) The Board may delegate any of its power to the Chief Executive Officer for any period and on terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power delegated to the Chief Executive Officer.
- (e) The Chief Executive Officer must:
  - (1) exercise the powers granted to him or her under this Constitution, or delegated to him or her by the Board, in accordance with the Board's directions;
  - (2) promote the objects of WAM; and
  - (3) keep the Board informed as to the management of WAM.

## **9 Annual General Meetings**

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- (a) The Annual General Meeting of WAM shall be held within 6 months of the end of WAM's financial year (or such longer period as may in a particular case be allowed by the Commissioner under the Act).
- (b) The Board must determine the date, time and place of the Annual General Meeting.
- (c) The ordinary business of the Annual General Meeting is as follows:
  - (1) to confirm the minutes of the previous Annual General Meeting and of any Special General Meeting held since then if the minutes of that meeting have not yet been confirmed;
  - (2) to receive and consider the Board's annual report on WAM's activities during the preceding financial year;
  - (3) if required to be presented for consideration under Part 5 of the Act, a copy of the report of the review or auditor's report on the financial statements or financial report;
  - (4) to elect the Board Members; and
  - (5) if applicable, to appoint or remove a reviewer or auditor of WAM in accordance with the Act.
- (d) Any other business of which notice has been given in accordance with this Constitution may be conducted at the Annual General Meeting.
- (e) At the Annual General Meeting, a quorum shall consist of at least 10 ordinary members or life members of WAM present in person or by proxy, including at least 2 Board Members.

## **10 General meetings**

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- (a) Subject to clause 10(b), the President, or in that person's absence the Vice-President, shall chair at every General Meeting.
- (b) If at a General Meeting neither the President nor the Vice-President is present within 15 minutes after the time appointed for holding the General Meeting, or if the President and/or the Vice-President are unwilling to act as chair, the members present shall elect one of their number to chair.
- (c) At all General Meetings, the chair shall be entitled to vote and, where there is no majority, may exercise a second and casting vote.
- (d) Written notice of each General Meeting (where convened by the Board) shall be given by the Secretary to each member not less than 21 days before the date on which it is to be held.

- (e) The notice must:
  - (1) specify the date, time and place of the meeting;
  - (2) indicate the general nature of each item of business to be considered at the meeting; and
  - (3) if the meeting is the Annual General Meeting, include the names of the members who have nominated for election to the Board under clause 8.1(a); and
  - (4) if a special resolution is proposed:
    - (A) set out the wording of the proposed resolution as required by section 51(4) of the Act; and
    - (B) state that the resolution is intended to be proposed as a special resolution.
- (f) If within 30 minutes of the meeting time appointed for a General Meeting a quorum is not present, then:
  - (1) the General Meeting shall be adjourned until another time, not later than 28 days from the date of the adjourned meeting and at a place to be specified in a written notice given to members within 14 days of the adjourned meeting, and at such adjourned meeting those present shall form a quorum for all purposes; or
  - (2) in the case of a Special General Meeting convened upon petition by the members, it shall lapse until reconvened with the appropriate form and period of notice.

## **11 Special General Meetings**

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- (a) Special General Meetings can be called by:
  - (1) the Board at any time; or
  - (2) a petition of not less than 20% of the members.
- (b) The members requiring a Special General Meeting to be convened must:
  - (1) give written notice to the Secretary; and
  - (2) state in the notice the business to be considered at the meeting; and
  - (3) each sign the notice.
- (c) The Special General Meeting must be convened within 28 days after notice is given under clause 11(b)(1).
- (d) If the Board does not convene a Special General Meeting within that 28 day period, the members making the requirement (or any of them) may convene the Special General Meeting.
- (e) A Special General Meeting convened by members under clause 11(d):
  - (1) must be held within 3 months after the date the original requirement was made; and
  - (2) may only consider the business stated in the notice by which the requirement was made.
- (f) WAM must reimburse any reasonable expenses incurred by the members convening a Special General Meeting under clause 11(d).



## **12 Common seal and execution of documents**

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- (a) WAM may execute a document without using a common seal if the document is signed by:
  - (1) 2 Board Members; or
  - (2) one Board Member and a person authorised by the Board.
- (b) If WAM has a common seal:
  - (1) the name of WAM must appear in legible characters on the common seal; and
  - (2) a document may only be sealed with the common seal by the authority of the Board and in the presence of:
    - (A) 2 Board Members; or
    - (B) one Board Member and a person authorised by the Board,and each of them is to sign the document to attest that the document was sealed in their presence.
- (c) The Secretary must make a written record of each use of the common seal.
- (d) The common seal must be kept in the custody of the Secretary or another Board Member authorised by the Board.
- (e) The Board may appoint any person to be attorney or agent of WAM for any purpose, including to execute documents and on any terms (including standing appointments) as the Board resolves and such appointment may be indirect via the Board approving a delegation or payment policy. Subject to the terms of appointment of an attorney or agent of WAM, the Board may revoke or vary that appointment at any time, with or without cause.

## **13 Auditor**

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An auditor shall be appointed at the Annual General meeting and shall be a duly qualified auditor. The auditor's report shall be attached to the accounts of WAM, to be presented at the following Annual General Meeting. The Board shall have the power to fill any casual vacancy in the position of auditor of WAM.

## **14 Amendment of this Constitution**

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If WAM wants to alter or rescind any clause of this Constitution or this Constitution in its entirety, or to make additional clauses, WAM may do so only by special resolution and by otherwise complying with Part 3 Division 2 of the Act.

## **15 Dissolution**

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WAM may be dissolved or wound-up by a special resolution.

## 16 Surplus property

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On the cancellation of WAM's incorporation or the winding up of WAM, its surplus property must be distributed as determined by special resolution by reference to the persons mentioned in section 24(1) of the Act.

## 17 Income and property

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- (a) The income and property of WAM shall be applied solely towards the promotion of the objects of WAM. No portion of the income or property shall be paid, transferred or distributed directly or indirectly to the members of WAM, except in good faith in the promotion of WAM's objects.
- (b) However, nothing in this clause shall prevent:
  - (1) the payment of the correct and proper remuneration to a member, servant, agent or employee of WAM in return for services actually rendered to WAM in the ordinary course of business;
  - (2) the receipt of any prize or award by any member (including a staff member or Board Member) from their participation in any festival, competition, event or any other activity of WAM; or
  - (3) the payment to a Board Member for any out-of-pocket expenses for travel and accommodation properly incurred in attending a Board Meeting, in attending a General Meeting or otherwise in connection with WAM's business.

## 18 Public fund

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- (a) At all times that WAM is on the Register, it must comply with the rules set out in this clause 18.
- (b) WAM will establish and maintain a public fund.
- (c) Donations will be deposited into the public fund listed on the Register. These monies will be kept separate from other funds of WAM and will only be used to further the principal purpose of WAM. Investment of monies in this fund will be made in accordance with guidelines for public funds as specified by the Australian Taxation Office.
- (d) The fund will be administered by a subcommittee of the Board, the majority of whom, because of their tenure of some public office or their professional standing, have an underlying community responsibility, as distinct from obligations solely in regard to the cultural objectives of WAM.
- (e) No monies or assets in this fund will be distributed to members of WAM, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.
- (f) The Department responsible for the administration of the Register will be notified of any proposed amendments or alterations to provisions for the public fund, to assess the effect of any amendments on the public fund's continuing Deductible Gift Recipient status.
- (g) Receipts for gifts to the public fund must state:
  - (1) the name of the public fund and that the receipt is for a gift made to the public fund;
  - (2) the Australian Business Number of WAM;

- (3) the fact that the receipt is for a gift; and
  - (4) any other matter required to be included on the receipt pursuant to the requirements of ITAA 97.
- (h) At the first occurrence of:
- (1) the winding up of the public fund;
  - (2) WAM ceasing to be endorsed as a deductible gift recipient under subdivision 30-BA of ITAA 97; or
  - (3) WAM and the public fund ceasing to be on the Register,
- any surplus assets of the public fund (after satisfaction of all its debts and liabilities) must be given or transferred to some other fund, authority or institution having objects similar to the objects of this public fund, and whose rule must prohibit the distribution of its or their income among its or their members, such fund or institution to be eligible for tax deductibility of donations under subdivision 30-B, section 30-100, of ITAA 97 and listed on the Register.
- (i) The identity of the fund, authority or institution referred to in clause 18 must be decided by resolution of the Board or, if WAM is being wound up or dissolved, by ordinary resolution of WAM members.

## 19 Suspension or expulsion

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- (a) The Board may decide to suspend a member's membership or to expel a member from WAM if:
- (1) the member contravenes any clause of this Constitution; or
  - (2) the member acts detrimentally to the interests of WAM.
- (b) The Secretary must give the member written notice of the proposed suspension or expulsion at least 28 days before the Board Meeting at which the proposal is to be considered by the Board.
- (c) The notice given to the member must state:
- (1) when and where the Board Meeting is to be held;
  - (2) the grounds on which the proposed suspension or expulsion is based; and
  - (3) that the member, or the member's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the proposed suspension or expulsion;
- (d) At the Board Meeting, the Board must:
- (1) give the member, or the member's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the proposed suspension or expulsion;
  - (2) give due consideration to any submissions so made; and
  - (3) decide:
    - (A) whether or not to suspend the member's membership and, if the decision is to suspend the membership, the period of suspension; or
    - (B) whether or not to expel the member from WAM.
- (e) A decision of the Board to suspend the member's membership or to expel the member from WAM takes immediate effect.

- (f) The Board must give the member written notice of the Board's decision, and the reasons for the decision, within 7 days after the Board Meeting at which the decision is made.
- (g) A member whose membership is suspended or who is expelled from WAM may, within 14 days after receiving notice of the Board's decision under clause 19(f), give written notice to the Secretary requesting the appointment of a mediator under clause 26.
- (h) If notice is given under clause 19(g), the member who gives the notice and the Board are the parties to the mediation.

## **20 Consequences of suspension**

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- (a) During the period a member's membership is suspended, the member:
  - (1) loses any rights (including voting rights) arising as a result of membership; and
  - (2) is not entitled to a refund, rebate, relief or credit for membership fees paid, or payable, to WAM.
- (b) When a member's membership is suspended, the Secretary must record in the register of members:
  - (1) that the member's membership is suspended;
  - (2) the date on which the suspension takes effect; and
  - (3) the period of the suspension.
- (c) When the period of the suspension ends, the Secretary must record in the register of members that the member's membership is no longer suspended.

## **21 Application of dispute resolution provision**

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The procedure set out in clauses 22 to 24 (the grievance procedure) applies to disputes:

- (a) between members;
- (b) between the Board (or one or more Board Members) and a Board Member; or
- (c) between one or more members and WAM.

## **22 Parties to attempt to resolve dispute**

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

## **23 How grievance procedure is started**

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- (a) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by clause 22, any party to the dispute may start the grievance procedure by giving written notice to the Secretary of:
  - (1) the parties to the dispute; and
  - (2) the matters that are the subject of the dispute.

- (b) Within 28 days after the Secretary is given the notice, a Board Meeting must be convened to consider and determine the dispute.
- (c) The Secretary must give each party to the dispute written notice of the Board Meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.
- (d) The notice given to each party to the dispute must state:
  - (1) when and where the Board Meeting is to be held; and
  - (2) that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute.
- (e) If:
  - (1) the dispute is between one or more members and WAM; and
  - (2) any party to the dispute gives written notice to the Secretary stating that the party:
    - (A) does not agree to the dispute being determined by the Board; and
    - (B) requests the appointment of a mediator under clause 26,
 the Board must not determine the dispute.

## **24 Determination of dispute by Board**

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- (a) At the Board Meeting at which a dispute is to be considered and determined, the Board must:
  - (1) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute;
  - (2) give due consideration to any submissions so made; and
  - (3) determine the dispute.
- (b) The Board must give each party to the dispute written notice of the Board's determination, and the reasons for the determination, within 7 days after the Board Meeting at which the determination is made.
- (c) A party to the dispute may, within 14 days after receiving notice of the Board's determination under clause 24(a)(3), give written notice to the Secretary requesting the appointment of a mediator under clause 26.
- (d) If notice is given under clause 24(c), each party to the dispute is a party to the mediation.

## **25 Application of mediation provisions**

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- (a) Clauses 26 to 28 apply if written notice has been given to the Secretary requesting the appointment of a mediator:
  - (1) by a member under clause 19(g); or
  - (2) by a party to a dispute under clause 23(e)(2)(B) or 24(c).
- (b) If clauses 26 to 28 apply, a mediator must be chosen or appointed under clause 26.

## **26 Appointment of mediator**

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- (a) The mediator must be a person chosen:
  - (1) if the appointment of a mediator was requested by a member under clause 19(g), by agreement between the member and the Board; or
  - (2) if the appointment of a mediator was requested by a party to a dispute under clause 23(e)(2)(B) or 24(c), by agreement between the parties to the dispute.
- (b) If there is no agreement for the purposes of clause 26(a)(1) or 26(a)(2), then, subject to clauses 26(c) and 26(d), the Board must appoint the mediator.
- (c) The person appointed as mediator by the Board must be a person who acts as a mediator for another not-for-profit body, such as a community legal centre, if the appointment of a mediator was requested by:
  - (1) a member under clause 19(g);
  - (2) a party to a dispute under clause 23(e)(2)(B); or
  - (3) a party to a dispute under clause 24(c) and the dispute is between one or more members and WAM.
- (d) The person appointed as mediator by the Board may be a member or former member of WAM but must not:
  - (1) have a personal interest in the matter that is the subject of the mediation; or
  - (2) be biased in favour of or against any party to the mediation.

## **27 Mediation process**

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- (a) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- (b) Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least 5 days before the mediation takes place.
- (c) In conducting the mediation, the mediator must:
  - (1) give each party to the mediation every opportunity to be heard;
  - (2) allow each party to the mediation to give due consideration to any written statement given by another party; and
  - (3) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- (d) The mediator cannot determine the matter that is the subject of the mediation.
- (e) The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.
- (f) The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.

## 28 If mediation results in decision to suspend or expel being revoked

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If:

- (a) mediation takes place because a member whose membership is suspended or who is expelled from WAM gives notice under clause 19(g); and
- (b) as the result of the mediation, the decision to suspend the member's membership or expel the member is revoked,

that revocation does not affect the validity of any decision made at a Board Meeting or General Meeting during the period of suspension or expulsion.

## 29 Giving notices to members

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A notice or other document that is to be given to a member under these rules is taken not to have been given to the member unless it is in writing and:

- (a) delivered by hand to the recorded address of the member;
- (b) sent by post to the recorded postal address of the member; or
- (c) sent by electronic transmission to an appropriate recorded electronic address of the member.

## 30 Financial year

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WAM's financial year commences on 1 July of each year.

## 31 Definitions

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In this Constitution:

**Act** means the Associations Incorporation Act 2015 (WA).

**Annual General Meeting** means the General Meeting WAM is required to hold under section 50 of the Act.

**associate member** means a member with the rights given in clause 4.5(f).

**Board** means the management committee of WAM.

**Board Meeting** means a meeting of the Board.

**Board Member** means a member of the Board.

**books**, of WAM, includes the following:

- (a) a register;
- (b) financial records, financial statements or financial reports, however compiled, recorded or stored;
- (c) a document; and
- (d) any other record of information.

**Commissioner** means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of ITAA 97.

**Commissioner under the Act** means the person for the time being designated as the “Commissioner” under section 153 of the Act.

**financial records** includes:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers;
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain:
  - (1) the methods by which financial statements are prepared; and
  - (2) adjustments to be made in preparing financial statements.

**General Meeting** of WAM means a meeting of WAM that all members are entitled to receive notice of an attend, and includes WAM’s Annual General Meeting.

**grievance procedure** means the procedures set out in procedure set out in clauses 22 to 24.

**ITAA 97** means the Income Tax Assessment Act 1997 (Cth), as amended from time to time, and any subordinate legislation made under that legislation.

**life member** means a life member with the rights given in clause 4.5(d).

**member** means a person who is an ordinary member, life member or associate member.

**member** means an ordinary member, life member or associate member of WAM and, in relation to a member who is expelled from WAM, includes a former member.

**Office** means the offices of President, Vice-President(s), Secretary and Treasurer.

**Officer** means each of the President, Vice-President(s), Secretary and Treasurer.

**Ordinary Board Member** means each Board Member other than Selected Board Members.

**ordinary member** means an ordinary member with the rights given in clause 4.5(d).

**party to a dispute** includes a person:

- (a) who is a party to the dispute; and
- (b) who ceases to be a member within 6 months before the dispute has come to the attention of each party to the dispute.

**person** includes a body corporate.

**President** means the Board Member holding office as President of WAM.

**Recorded** means recorded in the register of members.

**Register** means the Register of Cultural Organisations maintained under section 30-295 of the ITAA 97.

**register of members** means the register of members referred to in section 53 of the Act.

**Secretary** means the Board Member holding office as secretary of WAM.

**Selected Board Member** means a Board Member appointed in accordance with clause 8.6(b).

**Special General Meeting** means a General Meeting of WAM other than the Annual General Meeting.

**special resolution** means a resolution passed by the members in accordance with section 51 of the Act.



**surplus property**, in relation to WAM, means property remaining after satisfaction of:

- (a) the debts and liabilities of WAM; and
- (b) the costs, charges and expenses of winding up or cancelling the incorporation of WAM,

but does not include books relating to the management of WAM.

**Treasurer** means the Board Member holding office as treasurer of WAM.

**Vice-President** means the Board Member(s) holding office as Vice-President of WAM.

**WAM** means The West Australian Music Industry Association Incorporated.