

Rules and Constitution of West City Music Incorporated

Adopted 14 September 2022

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RULES AND CONSTITUTION
OF
WEST CITY MUSIC INCORPORATED
PART ONE – INTRODUCTORY RULES

1. NAME AND REGISTERED OFFICE

- 1.1 **Name:** The name of the society is West City Music Incorporated (the "**Society**").
- 1.2 **Registered office:** The registered office of the Society will be at such place in New Zealand as the Executive may determine from time to time.

2. DEFINITIONS AND INTERPRETATION

- 2.1 **Definitions:** In this Constitution, unless the context otherwise requires:

"**Act**" means the Incorporated Societies Act 1908 and any successor legislation that applies to the Society, including the Incorporated Societies Act 2022. ¹

"**Annual General Meeting**" means a meeting of the Members of the Society held once per year, which, among other things, will receive and consider reports on the Society's activities and finances.

"**Band Manager**" means a person appointed as band manager of a performing ensemble or musical group operated by the Society.

"**Bylaws**" means the bylaws of the Society, as constituted or amended from time to time by the Executive under clause 12.1.

"**Class**" means a class of membership to the Society as set out at clause 6.

"**Complaint**" has the meaning given to it by clause 20.1.

"**Constitution**" means these rules and constitution, as amended from time to time.

"**Dispute**" has the meaning given to it by clause 20.4

"**Disputes Panel**" means a panel appointed by the Executive under clause 20.4.

"**Eligible Person**" is a person who meets the criteria in clause 11.8.

"**Executive**" means the Society's governing body, as established by clause 11.1.

"**Financial Member**" is a Member who is not an Unfinancial Member.

"**General Meeting**" means either an Annual General Meeting or a Special General Meeting

¹ Note: to update to Incorporated Societies Act 2022 once the relevant provisions of the 2022 Act have commenced.

of the Society.

"**Greater Auckland**" means the geographic area administered by Auckland Council.

"**Indemnified Person**" means a person who has been indemnified by the Society under clause 15.

"**Interested**" means, in respect of an Officer, an Officer who has an interest in a matter under the Act, and "**Interest**" has a corresponding meaning.

"**Life Member**" means a Member who belongs to the Class of the same name.

"**Management Committee**" means the Subcommittee established by clause 13.1.

"**MD Contract**" has the meaning given to it in clause 17.2.

"**Member**" means a person properly admitted as a member of the Society under this Constitution, who has not ceased to be a member.

"**Musical Director**" means a person who has entered into an agreement with the Society to provide musical director services in respect of a performing ensemble managed by the Society.

"**Notice**" means notice delivered to the Members by the Society using each Member's contact information provided to the Society in accordance with this Constitution.

"**Officer**" means an Officer of the Society, elected under clause 11.3.

"**Ordinary Resolution**" means a resolution of the Society that is approved by a simple majority of the votes of those Members entitled to vote and voting on the question.

"**Playing Member**" means a Member of the Class of the same name.

"**President**" means the Officer who is elected as president of the Society.

"**Society**" means West City Music Incorporated.

"**Subclass**" means a subclass of membership to the Society as determined by the Executive under clause 6.

"**Returning Officer**" means a person appointed under clause 9.8.

"**Reviewer**" has the meaning given to it in clause 19.3.

"**Special General Meeting**" means a meeting of the Members, other than an Annual General Meeting, called for a specific purpose or purposes.

"**Special Resolution**" means a resolution of the Society that is approved by a 75% majority of the votes of those Members entitled to vote and voting on the question.

"**Subcommittee**" means a subcommittee established by the Executive under clause 13.

"**Unfinancial Member**" has the meaning given to it in clause 5.8.

"**West Auckland**" means the geographic area within Auckland Council administered by the Henderson-Massey, Waitakere Ranges and Whau local boards.

2.2 **Interpretation:** In this Constitution, unless the context otherwise requires or specifically states otherwise:

- (a) the table of contents, headings and descriptions relating to sections of the Act, are inserted for convenience only and must be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) reference to a statute or other law includes regulations, rules, orders and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of adoption of this Constitution);
- (d) "written" and "in writing" include any means of reproducing words, figures and symbols in a tangible and visible form;
- (e) words and expressions defined or explained in the Act (unless expressly defined or explained in this Constitution) have the same meaning in this Constitution;
- (f) any word or expression equivalent with a definition in this Constitution has a meaning corresponding or construed to that definition; and
- (g) references to clauses and sub-clauses are references to clauses and sub-clauses in this Constitution, unless stated otherwise.

2.3 **Constitution not to prevail over Act:** This Constitution has no effect to the extent that it contravenes the Act, or is inconsistent with it, provided that if there is any conflict between:

- (a) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; or
- (b) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,

the provision, word or expression in this Constitution prevails.

3. PURPOSES OF THE SOCIETY

3.1 **Purposes:** The primary purposes of the Society are to:

- (a) promote music within the Greater Auckland community and to provide and outlet for the talents of its citizens and to entertain the community locally and further afield;
- (b) advance and promote the education of the Greater Auckland community by providing opportunities for members of the community to learn, practice and perform music;
- (c) operate performing musical groups or ensembles, which have a rehearsal location in West Auckland (unless otherwise agreed by Special Resolution);

- (d) promote the advancement of music within the Greater Auckland community through the performance of public concerts;
- (e) encourage members of the Greater Auckland community to acquire knowledge and skills in music and to become musically aware and appreciative;
- (f) promote and forward the interests and welfare of the Society in New Zealand; and
- (g) do all things reasonably incidental or conducive to attaining the above purposes.

3.2 **No financial gain:** It is not a purpose of the Society to operate for the financial (or pecuniary) gain of its Members.

4. POWERS

4.1 **Powers:** The Society has all the rights, powers and privileges of a natural person otherwise conferred onto it by the Act and by law, including the power to borrow money and incur debt, provided that the Society may only borrow money or incur debt if that transaction has been approved by at a General Meeting by Special Resolution.

4.2 **Furtherance of purposes:** The Society may only exercise its powers to achieve or further its purposes.

4.3 **Actions permitted by Act:** The Society may undertake an action that results in a financial benefit being provided to a Member only if the Act provides that in undertaking that action:

- (a) the Society does not have a purpose of financial (or pecuniary) gain; and
- (b) the Society is not being carried on for the financial gain of any of its Members.

PART TWO - MEMBERSHIP

5. MEMBERS

5.1 **Number of Members:** The Society must maintain the minimum number of Members required by the Act. The maximum number of Members is unlimited.

5.2 **Eligibility of Membership:** The Executive will determine any eligibility criteria of membership to the Society, and (if applicable) must publish such criteria in the Bylaws. Only natural persons can become Members of the Society.

5.3 **Admission of Members:** The process for admission is as follows:

- (a) any applicant must complete an application form, supply information or attend an interview, each as required by the Executive;
- (b) the Executive will approve the admission of any Member to the Society;

- (c) a Member will not be admitted to the Society unless they have provided written consent to becoming a Member.²

5.4 **Obligations and rights of Members:** Every Member:

- (a) must comply with this Constitution and the Bylaws;
- (b) must promote the interests and purposes of the Society and must do nothing to bring the Society into disrepute;
- (c) must provide the Society with that Member's name and contact details (as required by the Act) and promptly advise the Society of any changes to those details;
- (d) may only exercise the rights of membership (including attending and, where applicable, voting at General Meetings) if all subscriptions, levies and any other fees have been paid to the Society by the relevant due date.

5.5 **Annual subscriptions:** Each year, the Society must determine the annual subscription amount for membership to the Society at a General Meeting. A different subscription amount may be set for each Class of Membership, except for Life Members and Musical Directors, who will pay no annual subscription.

5.6 **Other fees:** Subject to clause 22.2, from time to time the Executive may charge fees in connection with a Member's involvement with specific Society events or activities.

5.7 **Other charges or levies:** Subject to clause 22.2 and approval by Ordinary Resolution, the Executive may charge additional levies on the Members or a Class of Members.

5.8 **Non-payment of subscriptions, fees or levies:** If a Member fails to pay any subscription, fee or levy imposed against it by the relevant due date, they will be deemed an "**Unfinancial Member**". Unfinancial Members will have no voting rights at a General Meeting and will not be counted when determining the quorum at a General Meeting.

6. CLASSES

6.1 **Classes:** There will be at least four Classes of Membership:

- (a) *Playing Members:* unless otherwise determined by the Executive, each musician in a performing group or ensemble must become a Playing Member;
- (b) *Non-playing Members:* a Member who does not belong to a performing group or ensemble;
- (c) *Life Members:* a Member who has been confirmed as a Life Member of the Society; and
- (d) *Musical Directors:* a Member who is engaged as a Musical Director,

The Executive may specify any further rights, obligations, incidentals or criteria of membership to each Class in the Bylaws.

² See section 26(c) and 76 of the Incorporated Societies Act 2022.

- 6.2 **Subclasses:** The Executive may divide the Members of a Class into two or more Subclasses. The Executive must specify the name of each Subclass and any rights, obligations, incidentals or criteria of membership to each Subclass in the Bylaws.
- 6.3 **Membership to a Class:** Each Member may only belong to one Class or Subclass. The Executive may make a determination to which Class or Subclass of membership a particular Member belongs.
- 6.4 **Admission of Life Members:** To be admitted as a Life Member, a Member must:
- (a) have been a Member for 20 years or more or have provided an exceptional service to the Society;
 - (b) be nominated by the Executive; and
 - (c) have their admission confirmed by Ordinary Resolution at a General Meeting.

7. CESSATION OF MEMBERSHIP

7.1 **Cessation:** A Member ceases to be a Member:

- (a) immediately on death or bankruptcy;
- (b) by resignation by written notice to the Society;
- (c) by resolution of the Executive, providing that the Executive may only remove a Member if that Member:
 - (i) no longer meets any applicable membership eligibility criteria;
 - (ii) has failed to pay any fee, levy or charge by its due date and has not remedied that failure within 10 business days of receiving notice from the Society to do so;
 - (iii) is subject to a dispute resolution process under this Constitution and following the disputes resolution process the Disputes Panel recommends that the Executive terminate the Member's membership; or
 - (iv) may otherwise be removed in accordance with the Constitution or Bylaws.

7.2 **Obligations on resignation or termination:** A Member who ceases to be a Member under this Constitution:

- (a) remains liable to pay all subscriptions, levies or fees imposed upon the Member before the date of their resignation or termination;
- (b) must return to the Society all material or property provided to them, their Representative or their related parties; and
- (c) will cease to be entitled to any membership rights stipulated by this Constitution or the Bylaws.

PART THREE – GENERAL MEETINGS**8. GENERAL MEETINGS**

8.1 **Annual General Meeting:** The Annual General Meeting will be held once a year no later than six months after the balance date of the Society, at a location determined by the Executive and consistent with any requirements in the Act.³

8.2 **Annual General Meeting business:**

- (a) The business of the Annual General Meeting must include:
- (i) confirmation of the minutes of the previous General Meetings;
 - (ii) receipt of the Society's annual report and the reviewed financial statements for the Society's previous accounting period and the Reviewer's report;
 - (iii) the election of vacant Officer positions in accordance with clause 11.3;
 - (iv) setting the annual Membership subscription; and
 - (v) consideration of any motions validly proposed by the Executive or a Member.
- (b) The Executive must, at each Annual General Meeting, present the following information:⁴
- (i) an annual report on the affairs of the Society during the most recently completed accounting period;
 - (ii) the reviewed financial statements of the Society for that period along with the Reviewer's report; and
 - (iii) notice of any disclosures of conflicts of interest made by Officers during that period (including a brief summary of the matters, or types of matters, to which those disclosures relate); and
 - (iv) any other matters required by the Act.

8.3 **Special General Meetings:** The Executive may resolve to call a Special General Meeting at any time, at a date and location fixed by the Executive. The Executive must call a Special General Meeting within 30 days of receiving a written request signed by the lesser of 10 per cent of current Financial Members or 10 Financial Members, to be held at a date and location fixed by the Executive.

8.4 **Special General Meetings' business:** The Executive resolution or Members' request to call a Special General Meeting must state the business that the Special General Meeting is to

³ See section 84 of the Incorporated Societies Act 2022.

⁴ See section 86 of the Incorporated Societies Act 2022.

deal with. A Special General Meeting will only consider and deal with the business specified in the Executive resolution or Members' request.

9. PROCEDURE AT GENERAL MEETINGS

9.1 **Notice:** The Executive must give all Members at least 21 days' Notice of any General Meeting and the business to be conducted at the General Meeting. The General Meeting and its business will not be invalidated simply because one or more Members did not receive Notice.

9.2 **Quorum:** No General Meeting may be held unless at least 10 Financial Members attend. This will constitute a quorum. If within half an hour after the time appointed for a meeting a quorum is not present the meeting will be adjourned to a day, time and place determined by the Executive, and if at such adjourned meeting a quorum is not present, those Financial Members present will be deemed to constitute a sufficient quorum.

9.3 **Voting etc:**

- (a) All Financial Members may attend, speak and vote at General Meetings in person or electronically (if appearing through an audio-visual link).
- (b) the method of voting may be by voices, hands or poll as determined by the chairperson of the General Meeting, providing that if a Member requests that a vote on a motion be conducted by poll (secret ballot), the chairperson must conduct the vote by poll. Each Member will have one vote.
- (c) Unless otherwise required by this Constitution, all motions at a General Meeting must be decided by Ordinary Resolution.
- (d) The chairperson of the General Meeting, with assistance from the Returning Officer (as required), will determine whether any motion has passed.

9.4 **Motions at General Meetings:**

- (a) The Executive may put forward motions for the Members to vote on at a General Meeting, which must be notified to the Members with the Notice of the General Meeting.
- (b) Members may request that a motion be voted on ("**Member's Motion**") at a General Meeting by providing notice to the Executive at least 10 days before that meeting. The Executive must provide notice of any Member's Motions received seven days before the meeting is to be held.

9.5 **Method of holding the General Meeting:** General Meetings may be held at one or more venues using any real-time audio, audio and visual, or electronic communication that gives each Member a reasonable opportunity to participate.

9.6 **Chairperson:** All General Meetings will be chaired by an Officer appointed by the Executive. If all Officers are absent from the meeting, the meeting must elect a Member or a Representative of a Member to chair the meeting. A person chairing a General Meeting will not have a casting vote.

9.7 **Powers of the chair:** Any person chairing a General Meeting may:

- (a) with consent of the General Meeting, adjourn the General Meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place;
- (b) direct that any person not entitled to be present at the meeting, obstructing the business of the meeting, behaving in a disorderly manner, being abusive or failing to abide by the directions of the chairperson be removed from the General Meeting;
- (c) in the absence of a quorum or in the case of emergency, adjourn the meeting or declare it closed.

9.8 **Returning Officer:** Prior to a General Meeting occurring, the Executive may appoint a Returning Officer. The Returning Officer must not be a nominee running for the Executive at that General Meeting. The role of the Returning Officer is:

- (a) to supervise the counting of any votes cast in relation to a motion conducted by poll and assist in determining whether such a motion has passed;
- (b) to determine the results of the election of the Officers.

10. RESOLUTION IN LIEU OF MEETING

10.1 **Resolution in lieu of meeting:** The Society may exercise any powers that would be exercised at a General Meeting by a written resolution approved by no less than 75% of the number of current Financial Members. Any such resolution may consist of several documents (including electronic communication such as by email) in similar form, each signed or approved to by one or more Members (whose approval may be given by electronic communication, including email).⁵

10.2 **Proposed resolution to be circulated to Members:** The Society must ensure:

- (a) the proposed resolution is dated with the date that it is first circulated to a Financial Member for the purpose of signing (the "**circulation date**");
- (b) the proposed resolution is sent to every current Member of the Society, as far as is reasonably practical, on the circulation date; and
- (c) that the proposed resolution will lapse within three months of the circulation date, and a statement to this effect is contained in the notice circulating the resolution.⁶

10.3 **Society to send passed resolution:** Within five working days after a resolution has passed under clause 10.1, the Society must send a copy of the resolution to each Member who did not approve the resolution.

⁵ See section 89 of the Incorporated Societies Act 2022.

⁶ See section 90 of the Incorporated Societies Act 2022.

PART FOUR - MANAGEMENT**11. EXECUTIVE**

- 11.1 **Establishment:** The Society will be managed by the Executive, who will exercise all powers of the Society in between General Meetings.
- 11.2 **Composition:** The Executive must consist of a minimum of three and a maximum of five Officers, one of whom must be the President.⁷ The Bylaws may specify other roles and responsibilities of Officers.
- 11.3 **Election of Officers:** The election of Officers will be conducted as follows:
- (a) in the notice of the Annual General Meeting provided under clause 9.1 the Executive must call for nominations for any vacant positions on the Executive, which must be received at least 10 days before the Annual General Meeting. The Executive must publish the list of nominees received at least seven days before the Annual General Meeting;
 - (b) if there are insufficient nominations received, further nominations may be received from the floor at the Annual General Meeting; and
 - (c) in the event any nominees receive equal votes, the tie will be resolved by the incoming Executive (excluding those in respect of whom the votes are tied).
- 11.4 **Term:** The term of office for all Officers will be one year, expiring at the end of the Annual General Meeting in the year corresponding with the last year of each Officer's term of office.
- 11.5 **Casual Vacancies:** If at any time there are fewer than five Officers, the Executive may, at any time, appoint an Eligible Person as an Officer.
- 11.6 **Removal:** An Officer will be removed from office immediately if they:
- (a) are no longer an Eligible Person under clause 11.8;
 - (b) provide written notice to the Executive of their resignation;
 - (c) are removed by resolution of the Executive; or
 - (d) are no longer able to perform the functions of their office.
- 11.7 **Too few Executive members:** If at any time there are fewer than three Officers, the Executive may only act:
- (a) to appoint Officers under clause 11.5;
 - (b) to convene a Special General Meeting; or
 - (c) to reasonably respond to any emergency.

⁷ Section 45 of the Incorporated Societies Act 2022 requires that a committee consist of at least three officers. Additionally, a majority of officers must be members or representatives of members (unless the Incorporated Society Regulations permit otherwise).

11.8 **Eligible Persons:** An Officer must be an Eligible Person. An Eligible Person is a person who is:

- (a) a natural person who is at least 18 years of age;⁸
- (b) a Playing Member, Non-playing Member or Life Member; and
- (c) not disqualified from being an officer of an incorporated society under the Act or disqualified from being a director of a company under the Companies Act 1993.

11.9 **Quorum:** A quorum of the Executive is a majority of currently appointed Officers.

11.10 **Chairperson:** The President will serve as chairperson of the Executive. In the event of an equality of votes, the chairperson will not have a casting vote.

11.11 **Exercise of powers:** The powers of the Executive are exercisable by:

- (a) resolution passed at a meeting of the Executive at which a quorum is present; or
- (b) written resolution signed by a majority of Officers.

11.12 **Delegation of powers:** The Executive may delegate to a Subcommittee, an Officer, an employee of the Society, or to any other person, any one or more of its powers.

11.13 **Contact officer:** If required to have a contact person by the Act, the Executive must appoint one or more Officers to act as contact person.⁹

12. BYLAWS

12.1 **Bylaws:** The Executive, from time to time, may make and amend Bylaws and policies for the conduct and control of the Society's activities and code of conduct applicable to Members, providing that any Bylaws are not inconsistent with the Act or this Constitution.

12.2 **Bylaws to be binding:** The Bylaws will be binding on all Members, Officers and employees of the Society.

13. MANAGEMENT COMMITTEE

13.1 **Management Committee:** There will be a Subcommittee known as the Management Committee consisting of:

- (a) the Executive;
- (b) all Musical Directors and Band Managers; and
- (c) any other person appointed as a member of the Management Committee by the Executive.

⁸ Note: The Incorporated Societies Act 2022 permits people aged 16 or over to become Society Officers.

⁹ See sections 112 – 116 of the Incorporated Societies Act 2020. The contact person must be at least 18 years old and resident in New Zealand.

13.2 **Powers and Responsibilities:** The Management Committee (and its appointees, as applicable) will have the powers, rights and responsibilities as set out in the Bylaws.

14. SUBCOMMITTEES

14.1 **Establishment:** The Executive may establish one or more Subcommittees on any basis that the Executive determines. The Executive may disestablish a Subcommittee at any time.

14.2 **Membership:** The Executive may appoint or remove Subcommittee members by resolution.

14.3 **Reporting:** Each Subcommittee will report to, and be under the supervision of, the Executive.

14.4 **Powers:** No Subcommittee may, without express approval of the Executive:

- (a) commit the Society to any financial expenditure or bind the Society to any legal obligation; or
- (b) further delegate any of its powers.

15. INDEMNITY AND INSURANCE¹⁰

15.1 **Indemnity of Officers:** Subject to clause 15.2, every Officer, Member or employee of the Society may be indemnified by the Society:¹¹

- (a) in respect of liability to any person other than the Society for any act or omission in their capacity as an Officer, Member or employee, and costs incurred by them in defending or settling any claim or proceeding relating to any such liability; and
- (b) for any costs incurred by them in any proceeding that relates to liability for any act or omission in their capacity as an Officer, Member or employee in which judgment is given in their favour, or in which they are acquitted, or which is discontinued,

and such indemnity will continue in force, despite any subsequent revocation or amendment of this clause, in relation to any liability which arises out of any act or omission by an Officer, Member or employee prior to the date of such revocation or amendment, but will be subject to any limitations contained in any deed or agreement from time to time in force between the Society and the Indemnified Person relating to indemnities.

15.2 **Exceptions:** An indemnity conferred by clause 15.1(a) will not apply in respect of:

- (a) any criminal liability; or
- (b) a liability that arises out of a failure to act in good faith and in what the Officer, Member or employee believes to be the best interests of the Society when acting in their capacity as an Officer, Member or an employee of the Society.

¹⁰ See part 3, subpart 6 of the Incorporated Societies Act 2022.

¹¹ Note: this clause can be amended to provide the indemnity in the Constitution (as opposed to a separate agreement). The Society and Committee should carefully consider whether to provide an indemnity in this manner (including by receiving appropriate legal advice).

An indemnity conferred by clause 15.1 will not apply in respect of any liability or costs in respect of which an indemnity is prohibited by any legislation or law.

- 15.3 **Insurance:** The Society may, with the prior approval of the Executive, effect insurance for an Officer, Member or employee of the Society, in respect of:
- (a) liability, not being criminal liability, for any act or omission in such capacity;
 - (b) costs incurred by them in defending or settling any claim or proceeding relating to any such liability; or
 - (c) costs incurred by them in defending any criminal proceedings that have been brought against the Officer, Member or employee in relation to any act or omission in his or her capacity as an Officer, Member or employee and in which they are acquitted.

- 15.4 **Definitions:** In this clause 15, words given extended meanings in the Act have those extended meanings.

16. INTERESTS OF OFFICERS¹²

- 16.1 **Disclosure of Interests:** An Officer must comply with the Act (relating to disclosure of interest of officers) but failure to comply with that section does not affect the operation of clause 16.2.¹³

- 16.2 **Personal involvement of Officers:** Notwithstanding any rule of law or equity to the contrary, but subject to the Act (relating to avoidance of transactions in which an Officer is Interested) and section 36(4)(a) of the Financial Reporting Act 2013 (prohibiting a director from acting as auditor of a specified entity), an Officer may:

- (a) contract with the Society in any capacity;
- (b) be a party to any transaction with Society;
- (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Society is a party or in which it is otherwise directly or indirectly interested or involved;
- (d) become a director or other officer of, or otherwise Interested in, any corporation promoted by the Society or in which the Society may be directly or indirectly Interested; and
- (e) retain any remuneration, profit or benefits in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause may be avoided by reason of an Officer's Interest.

- 16.3 **Interested Officers may not vote:** An Officer who is Interested in a transaction entered into, or to be entered into, by the Society may not:

¹² Note: This section will not be applicable until sections section 52 – 72 of the Incorporated Societies Act 2022 come into force.

¹³ Note: This requirement can be modified by a society's constitution if conditions prescribed by the Incorporated Societies Regulations are met. The Government is expected to publish draft regulations in quarter three of 2022.

- (a) vote on any matter relating to the transaction; or
- (b) sign a document relating to the transaction on behalf of the Society,

unless all Officers who are not Interested in the matter consent to that Officer voting on that matter or signing that document as the case may be.

16.4 **Interested Officers may take part in discussions:** Despite clause 16.3, an Officer who is Interested in a transaction may:

- (a) attend a meeting of the Executive at which any matter relating to the transaction arises;
- (b) take part in any discussion of the Executive and be present at the time of the decision of the Executive (unless the Executive decides otherwise); and
- (c) be included among the Officers present at the meeting for the purposes of a quorum.

16.5 **Executive to call Special General Meeting:** If, in respect of a matter, 50% or more Officers are prevented from voting under clause 16.3, the Executive must call a Special General Meeting to determine that matter.

PART FIVE – ADMINISTRATIVE AND OTHER MATTERS

17. MUSICAL DIRECTORS AND BAND MANAGEMENT

17.1 **Appointment of Musical Directors:** The Executive must appoint a Musical Director in respect of each performing ensemble operated by the Society, unless the Executive have resolved that it is in the interests of an ensemble to operate without a Musical Director from time to time.

17.2 **Musical Directors to be engaged as contractors:** The Society may only engage a Musical Director as an independent contractor and not as an employee. Any written agreement between the Society and a Musical Director ("**MD Contract**") will be subject to the following restrictions:

- (a) the maximum amount payable by the Society under an MD Contract will be \$20,000 per annum, or pro rata for shorter terms;
- (b) payments made to a Musical Director under an MD Contract must be made in arrears;
- (c) the maximum term of an MD Contract, including any rights of renewal, will be five years;
- (d) an MD Contract must contain provisions allowing for termination for convenience by either party, subject to a reasonable notice period; and
- (e) an MD Contract must include a provision requiring the Musical Director to become a Member of the Society.

17.3 **Appointment of Band Managers:** The Executive must appoint a Band Manager in respect of each performing ensemble operated by the Society. The Bylaws may further specify the rights, role and obligations of Band Managers.

18. RECORDS

18.1 **Register of Members:** The Executive must keep an up-to-date register of Members, recording for each Member their name, contact details and any other information required by this Constitution, the Bylaws or prescribed by the Act.¹⁴

18.2 **Register of interests:** The Executive must at all times maintain an up-to-date register of interests disclosed by Officers, as required by the Act.¹⁵

18.3 **Member access to records:** At any time, a Member may make a written request to the Society for information held by it in accordance with the Act. The Executive may provide that information or refuse to provide that information, in each case, in accordance with the Act.¹⁶

19. FINANCE

19.1 **Balance date:** The balance date and end of financial year of the Society will be 31 March each year.

19.2 **Financial records:** The Executive will cause to be maintained proper financial records, including producing annual financial statements in accordance with the Act.¹⁷

19.3 **Review of financial statements:** The Executive must appoint an independent, suitably qualified person to review the financial statements of the Society each year (the "Reviewer"). The Reviewer must be a member of Chartered Accountants Australia and New Zealand. The Executive is to provide the Reviewer with all reasonable assistance and access to Society records in order for them to undertake the review.

19.4 **Remuneration of Members:** The Executive may not remunerate any Member for services provided to the Society, unless:

- (a) those services were provided under a written agreement (including for the avoidance of doubt, an MD Contract); or
- (b) the Executive has resolved to pay a Member an honorarium for their services provided to the Society and that honorarium is no more than \$10,000 per annum (or pro rata for shorter periods),

provided that nothing in this clause shall prevent a Member from being reimbursed for reasonable expenses incurred on behalf of the Society.

¹⁴ See section 79 of the Incorporated Societies Act 2022.

¹⁵ Note: This requirement can be modified by a society's constitution if conditions prescribed by the Incorporated Societies Regulations are met. The Government is expected to publish draft regulations in quarter three of 2022.

¹⁶ See section 80 – 82 of the Incorporated Societies Act 2022.

¹⁷ See section 101 of the Incorporated Societies Act 2022.

19.5 **Gifts and ex-gratia payments:** In any given Financial Year, the Executive may not make a gift or ex-gratia payment to any Member that, in aggregate with all gifts or ex-gratia payments made to that Member, exceeds:

- (a) in the case of a Member that is providing services to the Society under one or more written agreements, 10% of the annual value of all agreements between the Society and that Member; or
- (b) in the case of all other Members, \$1,000,

unless that gift or ex-gratia payment has been approved by a Special Resolution of the Members.

19.6 **Gifts made in kind:** For the purposes of determining the value of a non-cash gift provided to a Member under clause 19.5, the value of the gift will be calculated as its market value.

20. DISPUTE RESOLUTION

20.1 **Raising disputes:** Any Member or Officer may raise a dispute, grievance or complaint against another Member (or their Representatives or agents), Officer, the Executive or the Society, in respect of that Member's involvement in the Society's activities by providing written notice to the Executive ("**Complaint**").

20.2 **Decision not to progress matter:** The Executive may not decide to proceed with a Complaint if:

- (a) the matter is trivial;
- (b) the matter does not appear to disclose any misconduct, breach of the Constitution or Bylaws or damage to that member's rights or interests;
- (c) the Complaint is without foundation or there is no apparent evidence to support it;
- (d) the person who has made the Complaint has an insignificant interest in the matter;
- (e) the conduct, incident or issue has already been dealt with and investigated on behalf of the Society; or
- (f) there has been undue delay in making the Complaint,

and that decision will be final and binding on the parties.

20.3 **Disciplinary proceedings:** The Executive may initiate a disciplinary procedure against a Member regarding alleged misconduct or contravention of the Constitution or the Bylaws.

20.4 **Disputes Panel:** Upon receipt of a Complaint from a Member or following the initiation of a disciplinary procedure (each a "**Dispute**"), the Executive will appoint three persons to form a Disputes Panel to hear the matter and propose a resolution to the Executive. No person may be appointed to the Disputes Panel if there are reasonable grounds to believe they may not be impartial or able to consider the matter without a predetermined view.

20.5 **Dispute procedure:** The Disputes Panel must conduct the hearing and determination of the Dispute in accordance with the Act, including conducting the hearing in accordance with the

principles of natural justice and any minimum requirements imposed by the Act.¹⁸ The Bylaws may further provide for the dispute resolution procedure.

20.6 Executive to approve outcome:

- (a) After receiving the proposed resolution from the Disputes Panel, the Executive will determine whether to approve the proposed resolution or not.
- (b) If there are reasonable grounds to believe that an Officer may not be impartial or able to consider the matter without a predetermined view, that Officer must be excluded from voting on the proposed resolution, however, they may be included among the Officers present at the meeting for the purposes of a quorum.
- (c) If a majority of Officers are excluded from voting on a proposed resolution under clause 20.6(b), the Executive must either:
 - (i) call a Special General Meeting for the purposes of voting to approve or reject the proposed resolution; or
 - (ii) delegate the decision to approve the recommendation to a Subcommittee or any other person under clause 20.7.
- (d) The decision of the Executive or a General Meeting to approve or reject a recommendation from the Disputes Panel is final and will not be subject to the review under this clause 20.

20.7 Executive may delegate approval of outcome: The Executive may delegate the approval of any resolution proposed by the Disputes Panel to a Subcommittee, or any other person, and the decision to approve or reject a recommendation will be final and binding as if made by the Executive under clause 20.6, provided that the Executive may not delegate to any person or group of people if there are reasonable grounds to believe that a decision maker may not be impartial or able to consider the matter without a predetermined view.

20.8 Other remedies: Nothing in this Constitution will affect a person's right to pursue alternate dispute resolution remedies.

21. METHOD OF CONTRACTING

21.1 Deeds: A deed which is to be entered into by the Society may be signed on behalf of the Society, by:

- (a) two or more Officers; or
- (b) an Officer, or any person authorised by the Executive, whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Society.

21.2 Other written contracts: An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Society, may

¹⁸ See Schedule 2 of the Incorporated Societies Act 2022.

be signed on behalf of the Society by a person acting under the express or implied authority of the Society.

- 21.3 **Other obligations:** Any other obligation or contract may be entered into on behalf of the Society in writing or orally by a person acting under the express or implied authority of the Society.
- 21.4 **Common seal:** If the Act requires the Society to have a common seal, that common seal must be in custody of the Executive or any person authorised by the Executive and may only be affixed to any document in accordance with the Act. Notwithstanding this clause 21.4, the Society may execute or enter into any obligation or contract in accordance with Subpart 1, Part 2 of the Property Law Act 2007.¹⁹

22. LIQUIDATION, WINDING UP AND DISTRIBUTION OF SURPLUS ASSETS

- 22.1 **Removal from the register:** If the Society has ceased operating, discharged its debts and liabilities to its known creditors and distributed its surplus assets in accordance with this Constitution, the Executive may apply to the Registrar of Incorporated Societies to remove the Society from the register.
- 22.2 **Obligations during liquidation etc:** If the Society is placed into liquidation, receivership or statutory management, each Member's liability to the Society will be limited to the balance of any annual subscription, fee or levy unpaid at the time the order for the appointment of a liquidator, receiver, statutory manager is made.
- 22.3 **Distribution of assets:** If the Society is wound up, liquidated or removed from the Register of Incorporated Societies, or a resolution to do so is passed by the Members at a General Meeting, no distribution of surplus assets may be made to any Members but instead must be made to an entity that and has a similar charitable purpose or purposes, as defined in section 5(1) of the Charities Act 2005, to the Society as determined by the Executive or as specified in a resolution of the Members passed at a General Meeting.

23. AMENDMENTS TO THE CONSTITUTION

- 23.1 **Amendment at General Meeting:** The Society may amend or replace this Constitution at a General Meeting by Special Resolution.
- 23.2 **Proposed motions to amend the Constitution:** Any proposed motion to amend or replace this Constitution must:
- (a) be signed by the greater of five per cent of current Financial Members or five Financial Members and given in writing; or
 - (b) be approved by the Executive.
- 23.3 **Accompanying information:** Any motion to amend the Constitution must be accompanied by a written explanation for the reasons for the proposal, and any recommendations the Executive has.

¹⁹ Note: The Property Law Act 2007 overrides the Incorporated Societies Act 1908 in respect of whether a society must execute a deed under its common seal.

23.4 **Minor technical amendments:** The Executive may, by unanimous resolution, amend this Constitution if the amendment has no more than a minor effect, corrects errors or makes similar technical amendments:

- (a) The Executive must provide written notice to every Financial Member of the Society stating the text of the amendment and that the Financial Member has a right to object to the amendment.
- (b) If no objection is received within 20 working days after the date the notice is served, the Executive may make the amendment.

23.5 **Updates to the Act:** If, following replacement or amendment of the Act, this Constitution is no longer consistent with the Act, the Executive may, by unanimous resolution, amend this Constitution to the extent required to make it consistent with the Act.