**Notice of Annual General Meeting**

South Australian Public (Primary) Schools Music Society Incorporated ABN 16 350 530 496

This notice is to advise you of the upcoming Annual General Meeting of the members of South Australian Public (Primary) Schools Music Society Incorporated A5571 / ABN 16 350 530 496 (**Society**).

The Annual General Meeting is being called and held in accordance with the Society’s Constitution, the *Associations Incorporation Act 1985* (SA), and in accordance with the Society’s obligations under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and ACNC Governance Standard 2.

The details of this meeting are as follows:

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| --- | --- |
| **Date:** | 8 December 2022  |
| **Time:** | 4:30pm |
| **Place:** | PSMF Office 28 Hay St, Klemzig |
| **Details to attend virtually:** | Join Zoom Meeting <https://us05web.zoom.us/j/85182640861?pwd=QUZSUkg1ODBhY0dsUUpqdk9iS1l0dz09> Meeting ID: 851 8264 0861 Passcode: 8wrEJb  |
| **Contact** | For more information about the AGM or for any questions, please contact the office in advance of the meeting at info.psmf528@schools.sa.edu.au.  |

 **General Business**

**1 Apologies**

**Apologies**

**Special Business

3 Amendment to constitution**

**3.1 Background**

The management committee of the Society recently completed a strategic review of the Society’s legal structure and activities, which has led to the conclusion that the Society should transition its incorporation from under the South Australian-based *Associations Incorporation Act 1985* (SA) to the Commonwealth-based *Corporations Act 2001* (Cth).

The Society has applied to Consumer and Business Services and has prepared this special resolution as subject to receiving authority to transfer its incorporation.

The management committee of the Society unanimously recommends that the members pass the special resolution below.

The management committee has set out further details in support of its recommendation in the Explanatory Memorandum to this notice.

**3.2** **Special Resolution**

To consider and, if thought fit, pass the following resolution as a special resolution, subject to receiving authority to transfer its incorporation:

That, the members of the Society:

1. approve the proposed name for the company limited by guarantee as ‘South Australian Public (Primary) Schools Music Society Ltd’ to be registered under the *Corporations Act 2001* (Cth);
2. approve the proposed constitution for the company limited by guarantee as made available to all members in advance (and as tabled at the annual general meeting);
3. approve and authorise any member of the management committee of the Society to make applications under the *Associations Incorporation Act 1985* (SA) and *Corporations Act 2001* (Cth);
4. approve and authorise the Society and any member of the management committee to sign all documents and do all other things necessary to give effect to the applications and related activities involving the incorporation as contemplated in this special resolution.

 **By order of the management committee.**

Terena PopePresident **Dated 14 November 2022**

**Notes:**

1. **A special resolution of the Society** **must be passed by at least 75% of the votes cast by members entitled to vote on the relevant resolution.**
2. **If the members pass the special resolution, then the resolution will be carried.**

**Explanatory memorandum**

Special Business

|  |  |
| --- | --- |
| **Executive Summary** | The management committee of the Society unanimously recommends that members vote in favour of the special resolution to transition the organisation from a not-for-profit ‘incorporated association’ registered under the *Associations Incorporation Act 1985* (SA) (**AI Act**) to a not-for-profit ‘company limited by guarantee’ registered under the *Corporations Act 2001* (Cth) (**Corporations Act**). The management committee has carefully considered the two legislative frameworks and has concluded that a company limited by guarantee legal structure is the natural and appropriate step for the Society to take, particularly noting:* the increasing size and complexity of the Society’s business and operations;
* the opportunity to enhance and strengthen the Society’s corporate governance framework;
* the opportunity to modernise the Society’s constitution;
* the commercial/trading activities of the Society;
* the Society’s potential capacity to operate interstate under Commonwealth law; and
* the transition from an incorporated association to a company limited by guarantee will not adversely affect the Society’s charitable status, charitable activities, property rights or contractual arrangements.

Importantly, the transition to a company will not impact the Society’s services/activities. |
| **Background** | An incorporated association may apply to Consumer and Business Services (**CBS**) under section 42 of the AI Act for approval to transfer the association’s incorporation to a company limited by guarantee under part 5B.1 of the Corporations Act.A public company limited by guarantee is a not-for-profit legal structure registered under the Corporations Act, which provides that the individual member’s liability is limited to the amount that is expressed in the company’s constitution, e.g. $10.The Society would remain the same organisation, with the same Australian Business Number, charitable activities, management, staff, and volunteers, but under a different incorporated legal structure.  |
| **Size and nature of organisation** | The AI Act provides a basic legal framework to enable relatively small, unsophisticated community organisations to receive the protections of incorporation. However, the Society has continued to grow in both size and complexity. The management committee now believe that the Society has evolved and grown to a point where the AI Act is no longer fit for purpose – and that the Corporations Act is a more appropriate legislative framework through which it should operate. |
| **Commercial / trading activities** | Incorporated associations are not intended to undertake substantial commercial/trading activities whereas a company limited by guarantee is not limited by such general restrictions. The AI Act provides that incorporated associations can trade with the public provided that the trade is ancillary to its principal purpose and it is not substantial when compared with its other activities. The Society’s commercial/trading activities are reasonably substantial, so it should more appropriately be operating under the Corporations Act rather than the AI Act.  |
| **National scope and jurisdiction** | Since incorporated associations are established under State-based legislation, are generally not permitted to operate outside of their respective State jurisdiction, unless they are registered under the Corporations Act as an ‘Australian Registered Body’. Such a registration would add a significant level of duplication, complexity, administrative burden, and cost to an incorporated association such as the Society.In addition, the Society would be registered and endorsed under the following Commonwealth-based laws, including the Corporations Act, *Australian Charities and Not-for-profits Commission Act 2012* (Cth), and the *Income Tax Assessment Act 1997* (Cth). |
| **Governance and management** | A not-for-profit company limited by guarantee structure under the Corporations Act provides for a more contemporary and enhanced governance framework relative to the rigid framework under the AI Act. It is on that basis that the company limited by guarantee structure is now widely considered as the optimal legal structure through which sophisticated charitable organisations with commercial activities are structured. |
| **Proposed new constitution for the Society as a company limited by guarantee** | In order for the Society to be registered as a company limited by guarantee, the Society will require a new constitution that reflects contemporary standards and that will maintain its existing charitable objects as a public benevolent institution. A copy of the proposed constitution has been made available for review and will be tabled at the annual General Meeting. Among the key features of the constitution include the following rules:* modifies the organisation’s legal entity identifier from ‘Inc’ to ‘Ltd’;
* maintains consistent charitable objects/purposes;
* establishes the guarantee limitation amount as $10;
* contemplates between three and fourteen directors on the board;
* provides for modern rules to ensure that meetings of the board, meetings of members, and certain resolutions between meetings are capable of being held and made using technology, such as video-conferencing;
* enables the board to appoint the company secretary from time to time;
* establishes three-year terms for each director elected by the members.
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**Proxy Form**

South Australian Public (Primary) Schools Music Society Incorporated ABN 16 350 530 496

|  |  |
| --- | --- |
| **Full name of member:** |  |
| **Postal address of member:** |  |
| **Email address of member:** |  |

**A. Appointment of proxy**I, being a member of South Australian Public (Primary) Schools Music Society Incorporated ABN 16 350 530 496 (Society) and entitled to attend and vote, appoint:

🞎 the Chairperson of the meeting (mark with an ‘X’ in the adjacent box)

**OR**

🞎 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Write the full number of the person that you wish to appoint to attend the meeting on your behalf (and who is not the Chairperson of the meeting)]

**OR**

or failing the person named, or if no person is named, the Chairperson of the meeting, as my proxy to attend, to vote in accordance with the following directions (or if no directions have been given, as the proxy sees fit), and to act generally on my behalf, at the annual general meeting of the Company to be held at:

|  |  |
| --- | --- |
| **Date:** | 8 December 2022  |
| **Time:** | 4:30pm |
| **Place:** | PSMF Office 28 Hay St, Klemzig |

at the meeting of the Society and at any adjournment of that meeting.

**B. Voting**My proxy is authorised to exerciseall of my voting and other rights as a member. I direct that my proxy vote on the following Special Resolution in the following manner (mark with an ‘X’ in the relevant box):

|  |  |
| --- | --- |
| **Special Resolution** | To consider and, if thought fit, pass the following resolution as a special resolution, subject to receiving authority to transfer its incorporation:That, the members of the Society:1. approve the proposed name for the company limited by guarantee as ‘South Australian Public (Primary) Schools Music Society Ltd’ to be registered under the *Corporations Act 2001* (Cth);
2. approve the proposed constitution for the company limited by guarantee as made available to all members in advance (and as tabled at the annual general meeting);
3. approve and authorise any member of the management committee of the Society to make applications under the *Associations Incorporation Act 1985* (SA) and *Corporations Act 2001* (Cth);
4. approve and authorise the Society and any member of the management committee to sign all documents and do all other things necessary to give effect to the applications and related activities involving the incorporation as contemplated in this special resolution.
 |
| **Voting** | 🞎For  | 🞎 Against | 🞎 Abstain  | 🞎 Discretion |

**Recommendation**Note: The management committee unanimously approved the resolution and recommends members vote ‘FOR’ the Special Resolution above.

\*If you mark the Abstain box for a particular item, you are directing your proxy not to vote on your behalf on a show of hands or on a poll and your votes will not be counted in computing the required majority on a poll.

The Chairperson intends to vote undirected proxies in favour (i.e. ‘FOR’ of all resolutions).

 **C. Signing**This section must be signed for the proxy to be effective and any directions to be implemented in accordance with the instructions set out in section D below.

**Individual / Representative**

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|  |

**D. Instructions for signing proxy form
Signing the proxy form**Subject to the rules of the Society, if the member is an individual, then the individual must sign.

If the member is not an individual (e.g. a school), then the appointed representative must sign.

**Lodging the proxy form with the Society**

This proxy form must be signed and received by the Society at its registered office or the email address set out below, not less than two business days before commencement of the meeting.

Please send by email to info.psmf528@schools.sa.edu.au or in person or by post to 28 Hay St, Klemzig 5087

Any proxy form received after that time will not be valid for the scheduled meeting.

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| **Last time and date for lodgement:** | 5:00pm 6 December 2022 |
| **By mail** | 28 Hay St, Klemzig 5087 |
| **By email** | info.psmf528@schools.sa.edu.au |