



Asthma Foundation of WA Inc  
ABN 57 057 873 242  
Notice of Annual General Meeting

Notice is given that the Annual General Meeting of the Members of Asthma Foundation of WA Inc ABN 57 057 873 242 (**Foundation**) will be held at 36 Ord Street, West Perth WA 6005 on 8 November 2021 at 10:30am (AWST).

#### Agenda

1. Opening
2. Attendance and proxies
3. Matters arising from the previous minutes
4. President's Report to Members
5. Consideration of Financial Statements of the Foundation
6. **Resolution: Appointment of Butler Settineri as Auditor for 2021-2022**

To consider, and if thought fit, pass the following resolution as an **ordinary resolution**:

*"That, for the purposes of section 87(1) of the Associations Incorporation Act 2015 (WA) and all other purposes, Butler Settineri are appointed as auditors of the Foundation for the financial year ending 30 June 2022."*

7. **Special Resolution: Replacement of Constitution of the Foundation**

(a) **Resolution**

To consider, and if thought fit, pass the following resolution as a **special resolution**:

*"That, for the purposes of rule 20 of the current constitution of the Foundation and Division 2 of Part 3 of the Associations Incorporation Act 2015 (WA) and all other purposes, the document submitted to the meeting and contained at Annexure 2 of the Notice is adopted as the constitution of the Foundation in substitution for the current constitution of the Foundation (which is repealed)."*

(b) **Additional information**

For the benefit of Members, the Foundation has prepared commentary in regards to the replacement of the constitution, which is contained at Annexure 1 to this Notice.

A copy of the new constitution is contained at Annexure 2 of this Notice.

Members are encouraged to read both the summary document and the new constitution and raise any queries they may have at or before the meeting.

8. Resolutions: Election of Board Members

(a) Election of Chris Bath (retires by rotation and seeking re-election)

To consider, and if thought fit, pass the following resolution as an **ordinary resolution**:

*"That, Chris Bath, being eligible, be re-elected as a Board Member of the Foundation."*

(b) Election of Dr Petra Czarniak (retires by rotation and seeking re-election)

To consider, and if thought fit, pass the following resolution as an **ordinary resolution**:

*"That, Dr Petra Czarniak, being eligible, be re-elected as a Board Member of the Foundation."*

(c) Election of Kerrie-Anne King (retires by rotation - appointed mid-year as a casual vacancy and seeking election)

To consider, and if thought fit, pass the following resolution as an **ordinary resolution**:

*"That, Kerrie-Anne King, being eligible, be elected as a Board Member of the Foundation."*

9. CEO Report

10. General Business

11. Close of Meeting

By order of the Board:

.....

Donna Rendell  
Chief Executive Officer  
Asthma Foundation of WA Inc

Dated: \_\_\_\_\_ 2021

## Annexure 1 - Overview of changes to constitution

As set out in the notice of meeting to which this document is attached, Asthma Foundation of WA Inc ABN 57 057 873 242 (**Foundation**) is proposing to seek approval of its Members to replace the existing constitution of the Foundation with a new constitution prepared by K&L Gates on a fully pro bono basis.

The Board of the Foundation (**Board**) determined that a thorough review of the existing constitution was required to ensure the constitution was straightforward, modernised and easy to understand for the benefit of the Foundation's Members and broader stakeholders.

In summary, no changes have been made to the constitution that adversely affects the rights of Members. However, for the benefit of the Members, below sets out an overview of the more important sections of the constitution and commentary as to whether the position is proposed to be amended and, if so, the rationale.

Concept	Position from Existing Constitution	Position under New Constitution	Commentary
<b>Objects</b>	Under the existing constitution, the objects did not include references to chronic obstructive pulmonary diseases ( <b>COPD</b> ) and other respiratory conditions.	Under the new constitution, the objects include undertaking objects to further support, education, advocate and promotion awareness in relation to COPD and other respiratory conditions.	The Board has taken the view it was important to expressly highlight in the objects that the Foundation's objectives include activities in relation to COPD and other respiratory conditions. This is not a change to the Foundation's service delivery, as the Foundation has been providing COPD services since 2016 - as such, it is important for the objects to reflect this.
<b>Eligibility of Members</b>	Under rule 5 of the existing constitution, the membership of the Foundation included both Ordinary Members and Honorary Life Members.	The membership structure of the Foundation remains as Ordinary Members and Life Members.  Rule 5.3 of the new constitution clarifies that any person <b>who supports the objects of the Foundation</b> is eligible to apply for approval as an Ordinary Member.	The Board has taken the view it was important to reiterate that membership is only open to those who support the objects of the Foundation.
<b>Eligibility of Directors</b>	Under rule 10.5 of the existing constitution, a person was not eligible to be elected as a Board Member unless he	Under rule 14.1(b) of the new constitution, a person is eligible to be a Board Member if:	To reflect current practices of the Foundation, a formal nomination process has not been included in the new constitution.

	<p>or she was nominated by a nominator and a seconder.</p>	<ul style="list-style-type: none"> <li>• are aged 18 or over;</li> <li>• are not an employee of the Association;</li> <li>• are a Member;</li> <li>• are not disqualified from being an office holder of the Board under sections 39 and 40 of the Associations Act or any other legislation which applies to the Association; and</li> <li>• satisfy any eligibility requirements determined by the Board from time to time.</li> </ul> <p>There is no formal nomination process required.</p>	<p>Typically, the Board undertakes an expressions of interest / interview process to determine suitable candidates that may be appointed as casual vacancies and ratified by Members at the annual general meeting.</p> <p>Also, the Board has taken the view it is important to clarify that Board Members cannot be employees of the Foundation - this is to ensure independence to the extent possible.</p>
<p><b>Quorum for General Meetings</b></p>	<p>Under rule 17.1 of the existing constitution, a quorum will be present at a general meeting of Members where 5 Members are present in person or by proxy.</p>	<p>Under rule 8.8(b) of the new constitution, a quorum will be present at a general meeting of Members where 2 Members are present in person or by proxy.</p>	<p>The Board has taken the view a reduced quorum is appropriate to ensure that the Foundation is not restricted by an inability to meet quorum at general meetings based on historical attendance numbers.</p>
<p><b>Quorum for Board Meetings</b></p>	<p>Under rule 15.5 of the existing constitution, quorum constituted 5 voting Board Members.</p>	<p>Under rule 16.3 of the new constitution, quorum constitutes half the Board Members in office.</p>	<p>It is more appropriate to ensure that quorum is not tied to a specific number, rather ascertained based on half the number of Board Members.</p> <p>This helps to circumvent any unintended issues where the Board was not quorate in the event there were less than 5 Board Members for whatever reason.</p>

<b>Notice of Meetings</b>	Under rule 16.5 of the existing constitution, 14 days' notice is required to be given to Members of all general meetings.	Under rule 8.4 of the new constitution, 14 days' notice is required to be given to Members of all general meetings. The exception to this is any general meeting at which a special resolution is being considered, in which case 21 days' notice must be given to Members.	Although not specifically required under the <i>Associations Incorporation Act 2015 (WA)</i> , 21 days' notice in respect of special resolutions is considered appropriate from a governance perspective given these resolutions are more critical in nature. It gives an extra week for Members to make themselves available for the meeting (or otherwise appoint a proxy).
<b>Voting rights of Members</b>	Under rule 19 of the existing constitution, each Member has 1 vote.	No change.	-
<b>Proxies</b>	Under rule 20 of the existing constitution, a Member may appoint another Member to act as its proxy and attend and vote on the appointing Member's behalf at any general meeting.	Under rule 8.5 of the new constitution, a Member is able to appoint any person (being a Member or non-Member) to act as its proxy and attend and vote on the appointing Member's behalf at any general meeting.	The Board has taken the view that it is not necessary for a proxy to be a Member as that person is required to vote in accordance with the appointing Member's proxy in any event. In some cases, the requirement for the proxy to also be a Member may be restrictive.
<b>Term of Board Members</b>	Under rule 10.3 of the existing constitution, Board Members served for a 3 year term.	Under rule 14.2 of the new constitution, the term of office of a Board Member commences when he or she is elected or appointed and ceases at the expiration of the third annual general meeting after their appointment.	The terms of office are now expressly tied to the annual general meeting.  Given the date of the annual general meeting varies year to year, this change was considered appropriate to ensure that the term of office of a Board Member did not expire prior to the annual general meeting and leave a vacancy on the Board. The practical effect is that the term remains more or less 3 years.
<b>Maximum Term of Board Members</b>	Not provided.	Under rule 14.3(d), a Board Member who has held office for a continuous period of 9 years or more since first being appointed or elected to the Board may only stand for re-election as a Board Member if, prior to the Annual General Meeting at which he or she intends to	It is not uncommon for not-for-profits to include overall term limits or maximum tenure for Board Members. Including an overall term limit or maximum tenure for Board Members may be advisable from a governance perspective to ensure there are defined periods in which new skills, ideas and thinking can be introduced at the Board level by the introduction of new Board Members.

		stand for re-election, the Board unanimously resolve that there is a particular need for that Board Member to continue for another term.	<p>A consecutive 9 year period is still a fairly significant amount of time and still ensures there can be an appropriate level of longevity at the Board level.</p> <p>To ensure some greater flexibility, the new constitution allows for the Board to unanimously determine that there are exceptional circumstances requiring a Board Member to serve an additional term (ie 3 years) after the expiration of 9 consecutive years.</p> <p>This may be appropriate where there is a particular project ongoing or some other matter requiring the continued input of the Board Member.</p>
<b>Patron/Vice Patron</b>	Under rule 12 of the existing constitution, the Board may resolve to appoint a person to the role of Patron / Vice-Patron	Not provided.	The view was taken that it was not necessary to include this concept specifically in the constitution - though, the Board retains the power to appoint a Patron / Vice Patron in its discretion.
<b>Ability of Members to request a General Meeting</b>	Under rule 16.1(c), Members holding in aggregate 20% of the voting power at a general meeting may on request to the Foundation require the Board to convene a meeting.	No change.	-
<b>Gift Fund</b>	Under rule 27 of the existing constitution, provision was made for the establishment of a formal Gift Fund.	Not provided.	The Foundation has received advice from K&L Gates confirming that, under the applicable legislation, the Foundation is not required to maintain a separate Gift Fund in connection with its tax endorsement.

Annexure 2 - New Constitution

K&L GATES

**Constitution of  
Asthma Foundation of Western  
Australia Incorporated**

**K&L Gates**  
Perth office  
Ref: 0908351.00002

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# Asthma Foundation of Western Australia Incorporated

## 1. Name of Association

The name of the Association is Asthma Foundation of Western Australia Incorporated.

## 2. Definitions and interpretation

### 2.1 Definitions

The following definitions apply in this Constitution unless the context requires otherwise:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and any regulations made under that statute;

**Annual General Meeting** means the annual general meeting of the Association Convened under rule 8.1;

**Association** means Asthma Foundation of Western Australia Incorporated;

**Associations Act** means the *Associations Incorporation Act 2015* (WA) and any regulations made under that statute;

**Board** means the management Board referred to in rule 12.1;

**Board Member** means a person elected or appointed to the Board from time to time;

**Board Register** means the register maintained in accordance with section 58 of the Act and referred to in rule 14.4;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia;

**Chairperson** means the person acting as chairperson of a General Meeting or Board meeting;

**Commissioner** means the person designated as the Commissioner from time to time under section 153 of the Act;

**Constitution** means this constitution as amended, supplemented or replaced from time to time;

**Consumers** means people with asthma, COPD or related conditions;

**Convene** means to call together for a formal meeting;

**COPD** means chronic obstructive pulmonary disease;

**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:
  - (i) the methods by which financial statements are prepared; and
  - (ii) adjustments to be made in preparing financial statements;

**Financial Report** means a financial report of a tier 2 association or tier 3 association prepared in accordance with Part 5 of the Associations Act and which consists of:

- (a) the Financial Statements for the relevant Financial Year;
- (b) the notes to the Financial Statements; and
- (c) the Board's declaration about the Financial Statements and notes;

**Financial Statements** means financial statements prepared in accordance with Division 3 of the Act;

**Financial Year** has the meaning given in rule 19.5;

**General Meeting** means a meeting of the Members that all Members are entitled to receive notice of and attend;

**Life Member** means a person approved by the Board as a Life Member under rule 5.6;

**Member** means either an Ordinary Member or a Life Member entered in the Register;

**Membership Fee** has the meaning given in rule 5.5(a);

**Objects** means the objects of the Association as set out in rule 3(b);

**Ordinary Member** means a person approved by the Board as an Ordinary Member under rule 5.4;

**Poll** means voting conducted in written form (as opposed to a show of hands);

**Present** means, in connection with a meeting, a Member being present in person or by proxy, attorney or Representative, and includes being present at a different venue from the venue at which other Members are participating in the same meeting, providing the pre-requisites for a valid meeting at different venues are observed;

**Register** means the register of Members of the Association referred to in rule 7.1;

**Representative** means a natural person nominated by a Member that is an organisation to act as that Member's representative at all General Meetings of the Association;

**Secretary** means the person appointed to the office of secretary of the Association from time to time;

**Special Resolution** has the meaning given in rule 9.2(b);

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth) and any regulations made under that statute;

**Term** has the meaning given in rule 14.2;

**tier 1 association** means an incorporated association to which section 64(1) of the Associations Act applies;

**tier 2 association** means an incorporated association to which section 64(2) of the Associations Act applies;

**tier 3 association** means an incorporated association to which section 64(3) of the Associations Act applies; and

**Treasurer** means the person appointed to the office of treasurer of the Association from time to time.

## 2.2 Interpretation

In this Constitution, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) headings are used for convenience only and do not affect the interpretation of this Agreement;
- (d) other grammatical forms of a defined word or expression have a corresponding meaning;
- (e) a reference to a document is to that document as amended, novated, supplemented, extended or restated from time to time;
- (f) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (g) "person" includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority, and any other body or entity whether incorporated or not;
- (h) "month" means calendar month and "year" means 12 consecutive months;
- (i) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) is to that statute as amended, consolidated, re-enacted or replaced from time to time;
- (j) "include", "for example" and any similar expressions are not used, and must not be interpreted, as words of limitation;
- (k) a reference to any agency or body that ceases to exist, is reconstituted, renamed or replaced, or has its powers or functions removed (**defunct body**) is to the agency or body that performs most closely the powers or functions of the defunct body; and
- (l) any expression in a provision of this Constitution that relates to a particular provision of the Associations Act has the same meaning as in that provision of the Associations Act.

## 2.3 Compliance with the Associations Act

This Constitution is subject to the Associations Act, which overrides any rule in this Constitution that is inconsistent with or not permitted by the Associations Act.

## 2.4 Transitional

Everything done under this Constitution continues to have the same operation and effect after the adoption of any successor Constitution as if properly done under that Constitution.

## 3. Objects and powers of the Association

- (a) The Association seeks to be recognised in the Western Australian community as an authority and the lead body representing, supporting, co-ordinating and promoting the interests of people with asthma, COPD and related conditions.
- (b) The objects of the Association are to:
  - (i) provide education and support services to improve health and wellbeing and reduce complacency and stigma relating to asthma, COPD and related conditions;
  - (ii) provide education and training in group settings for health professionals and community groups including general practitioners, practice nurses, pharmacies, schools, sporting clubs, workplaces, child-care centres, prisons and the like;
  - (iii) provide consumers and health professionals with best practice, evidence-based information and services relating to the causes, prevention, diagnosis and treatment of asthma, COPD and related conditions;
  - (iv) promote and raise awareness of asthma, COPD and related conditions;
  - (v) collaborate with the medical profession and with government health agencies in the promotion and application of education and support programmes for people with asthma, COPD and related conditions;
  - (vi) act as a conduit for other organisations committed to the same objectives;
  - (vii) raise money for the charitable purpose, undertaking fundraising activities to generate funds for the fulfillment of these objectives and to secure sustainability of the Association;
  - (viii) appoint, engage and employ staff, consultants and any other persons the employment of whom is in the opinion of the Association, desirable or calculated to assist in or facilitate the fulfilment of the objectives; and
  - (ix) promote and fund medical research into causes, prevention, diagnosis and treatment of asthma, COPD and related conditions.
- (c) The Association has all the powers of an incorporated association under the Associations Act. The Association may only use its powers to do:
  - (i) anything which it considers will advance or achieve the Objects; and
  - (ii) all other things that are incidental to carrying out the Objects.

## **4. Not for profit**

- (a) All property and income of the Association must be applied solely towards promoting the Objects, and no part of the Association's property or income may be paid or otherwise distributed, directly or indirectly to any Member, except in good faith in promoting the Objects.
- (b) A payment may be made (directly or indirectly) to a Member out of the funds of the Association only if it is authorised under rule 4(c).
- (c) A payment to a Member out of the funds of the Association is authorised if it is:
  - (i) a payment in good faith to that Member of reasonable remuneration for services provided to the Association; or reasonable compensation for goods supplied to the Association in the ordinary course of business;
  - (ii) a payment of interest on money borrowed from a Member by the Association, at a rate not exceeding the cash rate published from time to time by the Reserve Bank of Australia;
  - (iii) a payment of reasonable rent to the Member for any premises leased by the Member to the Association; or
  - (iv) the reimbursement of reasonable expenses properly incurred by a Member on behalf of the Association.

## **5. Membership of the Association**

### **5.1 Number of Members**

The minimum number of Members of the Association is 6.

### **5.2 Membership rights**

- (a) A Member has all the rights provided to Members under this Constitution, including (but not limited to) the right to:
  - (i) receive notices from the Association;
  - (ii) attend, request the convening of and vote at all General Meetings of the Association; and
  - (iii) be elected to the Board and any sub-committees of the Association.
- (b) Subject to the Associations Act, and without derogating from the rights of existing Members, the Association may by resolution create additional classes of membership of the Association and determine the eligibility criteria, rights and obligations of those associate members.

### **5.3 Eligibility for membership**

- (a) Any person who supports the Objects is eligible to apply for approval as an Ordinary Member.
- (b) A person may be approved as a Life Member under rule 5.6.

## **5.4 Applying for membership**

- (a) Every application for approval as an Ordinary Member must be:
  - (i) in a written form approved by the Board for that purpose and signed by the applicant;
  - (ii) submitted to the Secretary or in any other way approved by the Board; and
  - (iii) be accompanied by the applicable Membership Fee.
- (b) The Board will consider membership applications and in its absolute discretion may approve or reject an application, without giving reasons.
- (c) The Secretary must inform applicants of the outcome of their application within a reasonable period.
- (d) If the Board approves the membership application, the Secretary must:
  - (i) notify the applicant; and
  - (ii) within 28 days after the person becomes an Ordinary Member, enter the person's name in the Register.
- (e) An applicant whose membership application has been approved will not become an Ordinary Member until the Association has:
  - (i) received payment of any required Membership Fee; and
  - (ii) the applicant's details are entered in the Register in accordance with rule 7.1.

## **5.5 Membership Fees**

- (a) Membership Fees may consist of any fees determined by the Board from time to time for each class of membership, including (but not limited to):
  - (i) an entrance fee for membership; and
  - (ii) subscription fees payable annually or on another basis.
- (b) The Board may:
  - (i) set different Membership Fees for different classes of membership; and
  - (ii) in its absolute discretion waive all or part of a Membership Fee payable by any Member.
- (c) Membership Fees must be paid in the manner and by the date directed by the Board from time to time.
- (d) If any amount owing under this rule 5.5 remains unpaid for a period of 30 days after it falls due, the Secretary will send a notice to the Member requiring payment of the outstanding amount within 28 days of the date of the notice.

- (e) If the amount is not paid within this 28 day period then the Board may revoke that Member's membership.
- (f) The Board may, in its absolute discretion, reinstate the Member on payment of all arrears of amounts owing.

## **5.6 Life Members**

- (a) The Board may from time to time resolve to approve a person as a Life Member.
- (b) The Board may set such eligibility criteria for a Life Member as it deems appropriate.
- (c) A Life Member has all the rights of a Member under this Constitution but is not required to pay any Membership Fee.
- (d) If the Board approves a person as a Life Member, the Secretary must:
  - (i) notify the person in writing; and
  - (ii) within 28 days after the person becomes a Life Member, enter the person's name in the Register.

## **5.7 Liability of Members**

- (a) The liability of Members is limited to payment of any applicable Membership Fees in accordance with rule 5.5.
- (b) A Member is not liable, by reason of their membership, for the liabilities of the Association or the cost of winding up the Association.

## **5.8 No transfer of membership**

A right, privilege or obligation of a person by reason of their membership:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates upon the cessation of membership.

# **6. Ceasing to be a Member**

## **6.1 When a Member ceases to be a Member**

A person will cease to be a Member:

- (a) if the Member resigns by notice in writing to the Secretary, on the date that the notice is received by the Secretary, or any later date specified in the notice;
- (b) if their membership is revoked in accordance with rule 5.5(e) or 6.2;
- (c) where the Member is an individual, if the Member dies; or
- (d) where the Member is an organisation, if it is wound up, dissolved, deregistered or otherwise ceases to be an organisation.

## 6.2 Revocation of membership

- (a) Subject to this rule 6.2, the Board may at a Board meeting resolve to revoke a Member's membership if in its opinion:
  - (i) the Member's status or conduct is detrimental to the interests of the Association, including (without limitation) if the Member has brought the Association into disrepute;
  - (ii) the Member has failed to comply with this Constitution or any by-laws of the Association; or
  - (iii) the Member no longer meets the applicable criteria for membership in rule 5.3.
- (b) At least 7 days before the Board meeting referred to in rule 6.2(a) (**Revocation Meeting**), the Secretary must give written notice to the Member:
  - (i) of the proposed revocation of membership and the reasons for that proposed revocation;
  - (ii) of the date, time and place of the Revocation Meeting;
  - (iii) informing the Member that the Member may attend the Revocation Meeting and will be given a full and fair opportunity to make oral and written submissions to the Board.
- (c) At the Revocation Meeting, the Board must:
  - (i) give the Member a full and fair opportunity to make oral submissions and must give reasonable consideration to any written submissions; and
  - (ii) determine whether the Member's membership should be revoked.

## 6.3 Consequences of ceasing to be a Member

- (a) Any person ceasing to be a Member:
  - (i) will have its name removed from the Register;
  - (ii) is not entitled to any refund (or part refund) of any Membership Fee paid; and
  - (iii) will remain liable for and must pay to the Association all fees and any other amounts which were due to the Association at the date they cease to be a Member.
- (b) The Secretary must keep a record, for at least 1 year after a person ceases to be a Member, of:
  - (i) the date on which the person ceased to be a Member; and
  - (ii) the reason why the person ceased to be a Member.

## **7. Register of Members**

### **7.1 Maintaining the Register of Members**

- (a) The Secretary (or any other person authorised by the Board) must keep and maintain a Register in accordance with section 53 of the Associations Act, containing:
  - (i) the name and residential, postal or email address of each Member;
  - (ii) the class of membership of each Member (if applicable);
  - (iii) the date on which each Member's name was entered into the Register.
- (b) Any change in the membership of the Association must be recorded in the Register within 28 days.

### **7.2 Inspecting and copying the Register**

- (a) The Register is available for inspection free of charge by any current Member upon written request to the Secretary.
- (b) A Member may make a copy of entries in the Register.
- (c) A Member may apply in writing to the Board for a copy of the Register. The Board may in its discretion require the Member to provide a statutory declaration setting out the purpose of the request and declaring that the purpose is connected with the affairs of the Association.
- (d) The Board may charge a reasonable fee for providing a copy of the Register.
- (e) A Member must not use or disclose any information in the Register for any purpose other than a purpose that:
  - (i) is directly connected with the affairs of the Association; or
  - (ii) relates to the administration of the Associations Act.

## **8. General meetings**

### **8.1 Annual General Meetings**

- (a) The Association must hold an Annual General Meeting once in each calendar year and no later than 6 months after the end of each Financial Year, except where the Commissioner has allowed for a longer period under the Associations Act.
- (b) The Board must determine the place, date and time of the Annual General Meeting.

### **8.2 Business at Annual General Meeting**

Even if these items are not set out in the notice of meeting, the business of an Annual General Meeting may include:

- (a) reviewing the Association's activities and finances since the last preceding Annual General Meeting;

- (b) confirming the minutes of the last preceding Annual General Meeting and of any other General Meeting held since the last preceding Annual General Meeting;
- (c) receiving and considering:
  - (i) the Board's annual report on the Association's activities during the preceding Financial Year;
  - (ii) if the Association is a tier 1 association, the Financial Statements of the Association for the preceding Financial Year presented under Part 5 of the Associations Act;
  - (iii) if the Association is a tier 2 association or a tier 3 association, the Financial Report of the Association for the preceding Financial Year presented under Part 5 of the Associations Act; and
  - (iv) if required to be presented for consideration under Part 5 of the Associations Act, a copy of the review report or the auditor's report on the Financial Statements or Financial Report (as applicable);
- (d) electing Board Members;
- (e) where relevant, appointing an auditor or reviewer in accordance with the Associations Act; and
- (f) transacting any other business which under this Constitution or the Associations Act may properly be brought before the meeting.

### **8.3 Special General Meetings**

- (a) The Board may at any time Convene a General Meeting of the Members, or of any class of Members.
- (b) The Board must Convene a General Meeting of Members if it receives a request to do so which meets the following requirements:
  - (i) the request is made by at least 20% of Members eligible to vote at a General Meeting;
  - (ii) the request is in writing, signed by all the Members making the request, and states the business to be conducted at the General Meeting; and
  - (iii) the request is lodged with the Secretary, or the Chairperson in the absence of the Secretary.
- (c) On receipt of a request from Members under rule 8.3(b), the Board must:
  - (i) give all Members 21 days' notice of the General Meeting; and
  - (ii) hold the General Meeting within 2 months of the date of the request.
- (d) Subject to the Associations Act, the Board may cancel or postpone any General Meeting or change its venue by giving notice to all persons to whom the notice of the original meeting was given, but may not cancel a General Meeting which was called or requested by Members, without the prior written consent of those Members.

## **8.4 Notice of General Meetings**

- (a) Notice of every General Meeting must be given in the manner authorised by rule 18.1 to every Member and Board Member; and to any reviewer or auditor of the Association.
- (b) No other person is entitled to receive notice of a General Meeting, except any person authorised by the Board.
- (c) Notice of General Meetings (including Annual General Meetings) must be provided to Members:
  - (i) at least 21 clear days before any General Meeting at which a Special Resolution is proposed; and
  - (ii) excluding special General Meetings called in accordance with rule 8.3(b)) at least 14 clear days before any other General Meeting.
- (d) Subject to rule 8.4(e), shorter notice of General Meetings (including Annual General Meetings) may be provided if:
  - (i) for an annual General Meeting, all the Members entitled to vote at the annual General Meeting agree prior to the Annual General Meeting; and
  - (ii) for any other General Meeting, Members holding at least 95% of the votes that may be cast at the General Meeting agree prior to the General Meeting.
- (e) The Association cannot call a General Meeting or Annual General Meeting on shorter notice than that specified in rule 8.4(c) if a resolution will be moved at the meeting to:
  - (i) appoint or remove a Board Member; or
  - (ii) remove an auditor or reviewer.

## **8.5 Content of notice of General Meetings**

The notice of General Meeting must:

- (a) specify the place, date and time for the General Meeting (and, if the meeting is to be held in two or more places in accordance with rule 8.7, the technology that will be used to facilitate this);
- (b) state the general nature of the business to be transacted at the General Meeting;
- (c) if a Special Resolution is to be proposed at the General Meeting, set out an intention to propose the Special Resolution and state the resolution; and
- (d) contain a statement of each Member's right to appoint a natural person who need not be a Member to act as their proxy.

## **8.6 Failure to give notice**

Any resolution passed at a General Meeting is not invalidated by:

- (a) the accidental omission to give notice of a General Meeting to any Member or non-receipt of that notice by a Member; or
- (b) the accidental omission to send out the instrument of proxy to a person entitled to receive notice or non-receipt of that instrument by a Member.

### **8.7 Use of technology**

- (a) The Association may hold a General Meeting (including an Annual General Meeting) using any technology that gives Members a reasonable opportunity to participate and vote at the General Meeting.
- (b) The General Meeting is taken to be held where the Chairperson of the General Meeting conducts the General Meeting. All proceedings conducted in accordance with this rule 8.7 are as valid as if conducted at a single gathering of a quorum of those entitled to be Present.

### **8.8 Quorum**

- (a) No business may be transacted at a General Meeting unless a quorum of Members is Present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this Constitution, a quorum constitutes:
  - (i) 2 Members Present; or
  - (ii) where the total number of Members is less than 2, all those Members being Present.

### **8.9 If a quorum not Present**

If a quorum is not Present within 30 minutes after the time appointed for the General Meeting in the notice:

- (a) where the meeting is Convened on the requisition of Members, the meeting must be automatically dissolved; or
- (b) in any other case:
  - (i) the meeting stands adjourned to a day and at a time and place as the Board decides or, if no decision is made by the Board, to the same day in the next week at the same time and place; and
  - (ii) if no quorum is Present at the resumed meeting within 30 minutes after the time appointed for the meeting, provided at least 2 Members are Present at the resumed meeting, they will be taken to constitute a quorum.

### **8.10 Adjournments**

- (a) The Chairperson may, and must if directed to do so by the General Meeting, adjourn a General Meeting from time to time and from place to place.
- (b) Only business left unfinished at a meeting which was adjourned may be transacted at a meeting resumed after an adjournment.

- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was in fact passed.
- (d) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of the original meeting. In all other cases it is not necessary to give notice of the adjourned meeting.

## **9. Voting at General Meetings**

### **9.1 Voting rights**

- (a) At General Meetings each Member entitled to attend and vote in accordance with this Constitution:
  - (i) has one vote on a show of hands or on a Poll; and
  - (ii) may attend and vote in person or by proxy, or attorney and, where the Member is an organisation, by Representative.
- (b) Each person Present at the General Meeting who represents more than one Member, either personally, by proxy, attorney or as Representative, has 1 vote on a show of hands.
- (c) A Member ordinarily entitled to vote is not entitled to vote if his or her Membership Fee (where a Membership Fee is payable) is more than 30 days in arrears at the commencement of the relevant General Meeting, unless the Board resolves otherwise.

### **9.2 Resolutions**

- (a) A resolution put to the vote at a General Meeting must be decided by a majority of votes cast by the Members Present at the General Meeting, except where it is required by this Constitution or otherwise by law that the resolution be a Special Resolution.
- (b) A Special Resolution is a resolution passed by the Association at a General Meeting in accordance with section 51 of the Associations Act by the votes of not less than three-fourths of the Members who validly cast a vote at the General Meeting.
- (c) A resolution put to the vote at a General Meeting must be decided on a show of hands unless a Poll is demanded in accordance with rule 9.3.
- (d) Before a vote is taken, the Chairperson must inform the General Meeting whether any proxy votes have been received and how the proxy votes are to be cast on the resolution.
- (e) In the case of an equality of votes on a show of hands or on a Poll, the Chairperson of the relevant General Meeting has a casting vote, in addition to any vote that the Chairperson may otherwise be entitled.
- (f) A declaration by the Chairperson that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting is conclusive evidence of that fact. Neither the Chairperson nor the minutes of the meeting need to state the number or proportion of the votes recorded in favour or against the resolution.

### **9.3 Voting by Poll**

- (a) A Poll may be demanded by:
  - (i) the Chairperson; or
  - (ii) at least 3 Members Present entitled to vote on the resolution.
- (b) A Poll may be demanded:
  - (i) before a vote is taken; or
  - (ii) before or immediately after the voting results on a show of hands are declared.
- (c) A demand for a Poll may be withdrawn.
- (d) Subject to rule 9.3(e), if a Poll is demanded, it is to be taken in the manner and at the time the Chairperson directs.
- (e) A Poll demanded on the election of a Chairperson or on a question of adjournment must be taken immediately.
- (f) The result of the Poll will determine whether the resolution on which the Poll was demanded is carried or lost.
- (g) A demand for a Poll does not prevent a General Meeting from proceeding with any other business.

### **9.4 Objection to qualification to vote**

- (a) An objection to a person's right to vote at a General Meeting:
  - (i) may only be raised at the General Meeting or adjourned meeting at which the vote objected to is tendered; and
  - (ii) must be determined by the Chairman of the meeting, whose decision is final.
- (b) A vote allowed after an objection is valid for all purposes.

### **9.5 Direct voting**

- (a) The Board may determine that, at any General Meeting, a Member who is entitled to attend and vote on a resolution at that meeting is entitled to vote by direct vote in respect of that resolution. A direct vote includes a vote delivered to the Association by post or any other means approved by the Board, subject to compliance with the Associations Act.
- (b) Where rule 9.5(a) applies, the notice of meeting must indicate that direct voting is available at the relevant meeting or on particular resolutions.
- (c) The Board may prescribe procedures in relation to direct voting, including (without limitation):
  - (i) specifying the form, method and timing of casting a direct vote at a meeting for the vote to be valid; and

- (ii) the circumstances in which a direct vote may be withdrawn by the Member or deemed withdrawn.

## **9.6 Votes counted in error**

If any vote is counted which ought not to have been counted or might have been rejected, the error will not invalidate the resolution unless the error is:

- (a) detected at the same General Meeting; and
- (b) of sufficient magnitude, in the opinion of the Chairperson, as to invalidate the resolution.

## **10. Minutes**

- (a) The Board must cause minutes to be made of:
  - (i) proceedings and resolutions of General Meetings of the Members and resolutions passed by Members without a meeting;
  - (ii) all appointments of Board Members; and
  - (iii) proceedings and resolutions of Board meetings and resolutions passed by the Board without a meeting,and retain the minutes whether in hard copy or by electronic means for such period as may be required under the Associations Act.
- (b) The Association must ensure that minutes are signed within a reasonable time after the date of the meeting or of the resolution being passed by:
  - (i) the Chairperson of the meeting;
  - (ii) the Chairperson of the next meeting; or
  - (iii) in the case of a resolution without a meeting, a Board Member.
- (c) In the absence of evidence to the contrary, contents of the minute book that is recorded and signed in accordance with this rule 10 is evidence of the matters shown in the minute.

## **11. Resolving disputes**

### **11.1 Application of disputes procedure**

The disputes procedure set out in this rule applies to disputes under or relating to this Constitution between:

- (a) a Member and another Member or Members; and
- (b) a Member or Members and the Association.

## 11.2 Disputes procedure

- (a) The parties to the dispute must attempt to resolve the dispute (in person or by telephone, email, or any other means of communication) within 28 days after the dispute comes to the attention of all of the parties. In the case of a dispute involving the Association, the Chairperson or another Board Member nominated by the Chairperson will represent the Association.
- (b) If the parties are unable to resolve the dispute within the 28 day period specified in rule 11.2(a), either party may initiate the dispute resolution procedure by giving a written notice to the Secretary identifying the parties to the dispute and the subject of the dispute.
- (c) Within 28 days of receipt of a notice under rule 11.2(a), a Board meeting must be Convened to determine the dispute.
- (d) The Secretary must give the parties to the dispute at least 7 days' prior written notice of the Board meeting, informing them that they may attend the meeting (in person or via telephone, video conferencing or any other available means of instant communication) and make oral or written submissions (or both).
- (e) At the Board meeting, the Board must:
  - (i) give each party to the dispute, or the party's representative, a full and fair opportunity to make oral or written submissions and must give reasonable consideration to any submissions; and
  - (ii) determine the dispute, or if it thinks appropriate, refer the dispute to an alternative dispute resolution process.
- (f) Written notice of the Board's decision regarding the dispute must be given to all parties to the dispute within 7 days after the Board meeting.
- (g) Following the Board's decision, any party to the dispute may request the dispute to be referred to mediation by notice to the Dispute Board within 14 days of receipt of the notice under rule 11.2(f).

## 11.3 Mediation

- (a) Where a dispute is referred to mediation under this Constitution, a mediator who is eligible in accordance with rule 11.3(b) must be appointed by:
  - (i) agreement between the parties to the dispute within 28 days of the referral; or
  - (ii) the Board, if the parties fail to agree on the mediator within the period specified in rule 11.3(a)(i).
- (b) The person appointed as mediator:
  - (i) may be a Member or former Member, but must not have any personal interest in the subject matter of the dispute, or be biased in favour of or against any party to the mediation; and
  - (ii) must be a person who acts as a mediator for another not-for-profit body.

- (c) The mediation must be commenced within 28 days after the mediator has been appointed and must be concluded within 1 month after the mediator has been appointed, unless otherwise agreed between the parties to the dispute.
- (d) The mediator's costs are to be paid by the party or parties to the mediation that requested the appointment of the mediator.
- (e) Each party must meet its own costs of and in connection with the mediation.
- (f) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation and must comply with requests by the mediator, including requests to provide evidence, attend meetings and pay the mediator's fees.
- (g) Unless otherwise agreed between the parties, the parties must exchange written statements of the issues that are in dispute between them and supply copies to the mediator at least 5 days before the mediation session.
- (h) The mediator, in conducting the mediation, must:
  - (i) give the parties to the mediation process every opportunity to be heard;
  - (ii) allow due consideration by all parties of any written statement submitted by any party; and
  - (iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (i) The mediator must not determine the dispute.
- (j) The mediation must be confidential and without prejudice.
- (k) If the mediation process does not result in the dispute being resolved, the parties may apply to the State Administrative Tribunal (or any other appropriate body) to determine the dispute in accordance with the Associations Act or otherwise at law.

#### **11.4 If dispute resolution results in decision to suspend or expel being revoked**

If a disputes procedure under this rule 11 takes place concerning the revocation of a Member's membership and the result of the disputes procedure is that the Member's membership is reinstated, that revocation decision does not affect the validity of any decision made at a Board meeting or General Meeting during the period in which the Member's membership was purported to be revoked.

## **12. Board**

### **12.1 The Board**

- (a) The affairs of the Association will be managed by a Board consisting of:
  - (i) the following office holders (**Officeholders**):
    - (A) President;
    - (B) Vice-President;

- (C) Treasurer;
    - (D) any other office holders designated by the Board from time to time;  
and
  - (ii) at least 3 but no more than 9 other Board Members.
- (b) Each of the Officeholders must be appointed to the relevant position by resolution of the Board from the elected or appointed Board Members. To the extent that the Board resolves to appoint a person to an Officeholder position prior to the Annual General Meeting at which that person is seeking election (or re-election) as a Board Member, that resolution and the appointment of that person as an Officeholder must be:
- (i) subject to that person's election (or re-election) being confirmed by the Members at the Annual General Meeting; and
  - (ii) effective immediately after the relevant Annual General Meeting.

## **12.2 Powers of the Board**

- (a) The Board is responsible for managing the business of the Association and may exercise all powers of the Association which are not required by the Associations Act or this Constitution to be exercised by the Association in a General Meeting.
- (b) Without limiting the generality of rule 12.2(a), the Board may exercise all the powers of the Association to:
  - (i) acquire, hold, deal with, and dispose of any real or personal property;
  - (ii) open and operate bank accounts;
  - (iii) borrow money on terms and conditions as the Board thinks fit;
  - (iv) invest money not immediately required for the Objects as the Board thinks fit;
  - (v) grant security for the discharge of liabilities and obligations of the Association;
  - (vi) appoint agents to transact business on behalf of the Association; and
  - (vii) enter into any contract or arrangement.

## **12.3 Payments to Board Members**

- (a) The Association must not pay fees to a Board Member for acting as a Board Member.
- (b) Rule 12.3(a) does not apply to any payments for out-of-pocket travel and accommodation expenses properly incurred in connection with the performance of the Board Member's functions, including (but not limited to) attending Board meeting and General Meetings.

## **13. Responsibilities of Board Members**

### **13.1 Responsibilities of Board Members and declaring interests**

- (a) Each Board Member must exercise his or her powers and discharge his or her duties as Board Member in accordance with the Associations Act and all applicable laws.
- (b) A Board Member who has a material personal interest in a matter which is or will be considered at a Board meeting must, to the extent required by the Associations Act:
  - (i) as soon as the Board Member becomes aware of the interest, disclose to the Board the nature and extent of the interest and how the interest relates to the activity of the Association;
  - (ii) not be present while the matter is being considered at the Board meeting or vote on the matter; and
  - (iii) ensure the nature and extent of the interest and how the interest relates to the activity of the Association is disclosed at the next General Meeting.
- (c) Rule 13.1(b) does not apply to any material personal interest that:
  - (i) exists only because the Board Member is a member of a class of persons for whose benefit the Association is established; or
  - (ii) the Board Member has in common with all, or a substantial proportion of, the Members.

### **13.2 President**

- (a) The President will act as the Chairperson of all Board meetings and General Meetings.
- (b) Where a Board meeting is held and the President is not present or declines to act as Chairperson, the Board Members present must elect one of their number to chair the meeting.
- (c) Where a General Meeting is held and the President is not present or declines to act as Chairperson, the Members present must elect a Board Member present to chair the meeting.
- (d) Where a person is appointed to chair a meeting under rule 13.2(a) or 13.2(c), in relation to that meeting, references to the Chairperson in this Constitution include a reference to that person.

## **14. Election of Board Members**

### **14.1 Eligibility**

- (a) Any person may become a Board Member either:
  - (i) by election at an Annual General Meeting under rule 14.3; or

- (ii) by appointment of the Board under rule 15.2.
- (b) A person is eligible for election to the Board only if they:
  - (i) are aged 18 or over;
  - (ii) are not an employee of the Association;
  - (iii) are a Member;
  - (iv) are not disqualified from being an office holder of the Board under sections 39 and 40 of the Associations Act or any other legislation which applies to the Association; and
  - (v) satisfy any eligibility requirements determined by the Board from time to time.

## **14.2 Term of office**

The term of office of a Board Member (which includes the Officeholders) (**Term**):

- (a) begins when he or she is elected at an Annual General Meeting under rule 14.3, or appointed under rule 15.2; and
- (b) ends at the conclusion of the third Annual General Meeting after his or her appointment, or otherwise under rule 15.

## **14.3 Election of Board Members**

- (a) Subject to the Associations Act, the Association may by resolution appoint or remove a Board Member from the Board.
- (b) The persons (if any) standing for election at each Annual General Meeting are any one or more of the following, as applicable:
  - (i) any Board Member required to retire under rule 14.2(b) and standing for re-election;
  - (ii) any Board Member required to retire under rule 15.2(b) and standing for election; or
  - (iii) a person standing for election as a new Board Member who has nominated in accordance with any procedures set by the Board from time to time.
- (c) Subject to rule 14.3(d), a retiring Board Member is eligible for re-election to any Board position provided that he or she gives prior notice of an intention to submit for re-election.
- (d) A Board Member who has held office for a continuous period of 9 years or more since first being appointed or elected to the Board may only stand for re-election as a Board Member if, prior to the Annual General Meeting at which he or she intends to stand for re-election, the Board unanimously resolve that there is a particular need for that Board Member to continue for another Term. Where the Board resolves as such, that Board Member may be re-elected by the Members for an additional Term.

- (e) There must be a separate election for each position on the Board that is open for election. No person may be elected to more than one position on the Board.
- (f) If the number of candidates seeking election to the Board is equal to the number of vacancies on the Board, the Chairperson must declare those persons elected to the Board.
- (g) If there are more candidates seeking election to the Board than the number of vacancies on the Board, the Members Present must vote to elect the Board Members, in accordance with any procedures agreed by the Board. A Member who has nominated for a Board position may vote for himself or herself.
- (h) Any person elected to the Board must within 7 days confirm in writing to the Board their eligibility under rule 14.1(b). If the person is not eligible, their appointment to the Board is deemed not to have taken place.

#### **14.4 Board Register**

- (a) The Secretary (or any person authorised by the Board) must keep and maintain a Board Register in accordance with section 58 of the Associations Act, including:
  - (i) the name; and
  - (ii) at least one of the residential address, business address, post office box address or email address,for each person identified in rule 14.4(b).
- (b) Rule 14.4(a) applies to:
  - (i) each Board Member;
  - (ii) any other person who holds any office in the Association;
  - (iii) every person who is authorised to use the seal of the Association (if any); and
  - (iv) any person who is appointed or who acts as trustee on behalf of the Association.

#### **14.5 Inspecting and copying the Board Register**

- (a) Subject to the Associations Act, the Board Register is available for inspection free of charge by any current Member upon written request to the Secretary.
- (b) A Member may make a copy of entries in the Board Register or take an extract but a Member does not have the right to remove the Board Register for that purpose.
- (c) A Member must not use or disclose any information in the Board Register for any purpose other than a purpose that:
  - (i) is directly connected with the affairs of the Association; or
  - (ii) relates to the administration of the Associations Act.

## **15. Resignation and removal from office**

### **15.1 Vacancy on the Board**

A Board Member's Term ends and that office becomes vacant if the Board Member:

- (a) resigns by notice in writing delivered to the President or the Board;
- (b) dies;
- (c) is or becomes ineligible to act as a Board Member under rule 14.1;
- (d) becomes physically or mentally incapable of performing the Board Member's duties and the Board resolves that his or her office be vacated for that reason;
- (e) is absent from more than:
  - (i) 3 consecutive Board meetings without leave of absence granted from the Board; or
  - (ii) 3 Board meetings in the same Financial Year without tendering an apology to the relevant Chairperson of each meeting, which apology is accepted by the Chairperson,  
  
and the Board resolves that his or her office be vacated for that reason;
- (f) ceases to otherwise be eligible to serve as a Board Member under this Constitution, the Associations Act or the ACNC Act; or
- (g) is the subject of a resolution passed by Members terminating his or her appointment as a Board Member.

### **15.2 Filling casual vacancies**

- (a) The Board may appoint a person who is eligible under rule 14.1(b) at any time to fill a Board position that is vacant.
- (b) A person who is eligible under rule 14.1(b) appointed to the Board under rule 15.2(a) holds office until the conclusion of the next Annual General Meeting, and is eligible for election to the Board at that Annual General Meeting.

### **15.3 Return of books and records**

- (a) As soon as practicable after a Board Member's term of office ends, that person (or if the Board Member has died, their personal representative) must deliver to the Board all books, records and documents of the Association in his or her possession, whether in hard copy or electronic format.
- (b) The Board may require the outgoing Board Member to certify in writing that, having complied with rule 15.3(a), he or she has destroyed all remaining electronic copies of books, records and documents of the Association.

## **16. Board proceedings**

### **16.1 Calling and holding Board meetings**

- (a) The Board or a Board Member may call a Board meeting by giving reasonable notice to each Board Member.
- (b) The Board may adjourn and otherwise regulate its meetings as it thinks fit.

### **16.2 Meetings by telecommunications**

Without limiting the Board's power to regulate its meetings as it thinks fit, the Board may hold a valid meeting using any medium by which each of the Board Members can simultaneously hear all the other participants (including telephone, video conferencing or any other means of instant communication), and in that case:

- (a) the participating Board Members are taken to be present at the meeting for the purposes of this Constitution;
- (b) the meeting is taken to be held where the Chairperson of the meeting is; and
- (c) all proceedings of the Board conducted in accordance with this rule 16.2 are as valid and effective as if conducted at a meeting at which all of the Board Members were present in person.

### **16.3 Quorum**

At a Board meeting, the number of Board Members whose presence is necessary to constitute a quorum is half the number of Board Members.

### **16.4 Guests at Board meetings**

- (a) The Board may invite a Member or any other person who is not a Board Member to attend a Board meeting.
- (b) A person invited to attend a Board meeting under rule 16.4(a) has no right to receive any agendas, notices or papers relating to the Board meeting; no right to vote; and no right to comment on any matters discussed at the Board meeting without the Board's consent.

### **16.5 Board resolutions**

- (a) Subject to this Constitution, a resolution of the Board must be passed by a majority of the votes of Board Members present and entitled to vote on the resolution.
- (b) Each Board Member has one vote.
- (c) In case of an equality of votes, the Chairperson has a second or casting vote in addition to his or her deliberative vote (if any).

### **16.6 Board resolutions without a meeting**

The Board may pass a resolution without a Board meeting being held if all the Board Members entitled to vote on the resolution:

- (a) sign a document (or separate identical copies of the document) containing a statement that they are in favour of the resolution set out in the document; or
- (b) confirm by email, text message or any other means approved by the Board that they are in favour of the resolution, in accordance with any policies adopted by the Board for this purpose.

## **16.7 By-laws**

- (a) The Board has the power to make by-laws regulating the establishment, organisation and conduct of the Association, provided such by-laws are not inconsistent with this Constitution or the Associations Act.
- (b) All by-laws made and in force from time to time are binding on the Members.

## **16.8 Acts valid despite defective appointment**

Subject to the Associations Act, any act done at any Board meeting by any person acting as a Board Member, even if it is later discovered that there was some defect in the appointment of any such Board Member or that the Board Member was not eligible for election under rule 14.1, is valid as if the Board Member had been duly appointed and was qualified to be a Board Member.

## **16.9 Sub-committees**

- (a) The Board may create sub-committees as it sees fit, consisting of such Members, Board Members or other persons who are not Members as the Board thinks fit. The Board may delegate to any sub-committee the exercise of such functions of the Board as are specified in the delegation other than:
  - (i) the power of delegation; and
  - (ii) a function which is a duty imposed on the Board by the Associations Act or any other law.
- (b) A sub-committee must exercise the powers granted to it in accordance with any direction of the Board. Any power exercised in accordance with this rule 16.9(b) is taken to be exercised by the Board.
- (c) Rules 16.1, 16.2 and 16.4 apply to any sub-committee as if each reference in those rules to the Board Members was a reference to the members of the sub-committee and each reference to a Board meeting were to a sub-committee meeting.
- (d) Minutes of all the proceedings and decisions of every sub-committee must be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Associations Act to be made, entered and signed.

## **17. Execution of documents**

### **17.1 Execution generally**

- (a) The Association may validly execute a document (including a deed) if the document is signed by a Board Member and countersigned by another Board Member or

another person authorised by the Board to countersign that document or a class of documents in which that document is included.

- (b) Rule 17.1(a) does not limit the Board's ability to authorise a person who is not a Board Member to execute a document for and on behalf of the Association.

## **17.2 Common seal**

- (a) The Association need not have or use a common seal to execute documents or deeds. The Board may resolve whether or not the Association is to have or use a common seal.
- (b) Where the Association has a common seal, it must only be used with the authority of the Board. The Secretary or any other Board Member authorised by the Board must ensure the safe custody of the seal.
- (c) The Secretary must record in a seal register details of every document to which the common seal of the Authority is fixed.

## **18. Notices**

### **18.1 How notice to be given**

All notices, including notices of meeting, may be given by the Association to any Member by:

- (a) serving it on the Member personally;
- (b) sending it by post to the Member's nominated address;
- (c) sending it by email to an email address nominated by the Member, or by any other electronic means nominated by the Member; or
- (d) giving it by any other means permitted or contemplated by the Associations Act.

### **18.2 When notice is given**

A notice is deemed to be given by the Association and received by the Member:

- (a) if delivered in person, when delivered to the Member;
- (b) if posted, at 9.00 am on the third (seventh, if sent to or from an address in another country) day after the date of posting, whether delivered or not; or
- (c) if sent by email, 2 hours after the time the email is sent to the Member's nominated email address, as recorded on the Association's email system, unless the Association receives, within that time period, an automatic notification (other than an out of office message) indicating that the email has not been delivered,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am (addressee's time) on the next Business Day.

## **19. Funds and accounts**

### **19.1 Control of funds**

- (a) The funds of the Association must be kept in an account or accounts in the name of the Association in a financial institution determined by the Board.
- (b) The Board is responsible for expenditure of the funds of the Association and may authorise the Treasurer or any other person to expend the funds of the Association within specified limits and any expenditure above those limits must be approved or ratified by the Board.
- (c) The funds of the Association are to be used to do:
  - (i) anything which it considers will advance or achieve the Objects; and
  - (ii) all other things that are incidental to carrying out the Objects.
- (d) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the Association are to be executed by:
  - (i) any 2 Board Members; or
  - (ii) any person or persons authorised by the Board,within the expenditure limits set by the Board.
- (e) All electronic payments by the Association are to be made or authorised by:
  - (i) the Chief Executive Officer or the Chief Financial Officer; or
  - (ii) any person or persons authorised by the Board,within the expenditure limits specified by the Board.

### **19.2 Source of funds**

The Association may derive funds in any way permitted by the Associations Act.

### **19.3 Financial Records**

- (a) The Association must keep Financial Records that:
  - (i) correctly record and explain its transactions, financial position and performance; and
  - (ii) enable true and fair Financial Statements to be prepared in accordance with Part 5 of the Associations Act.
- (b) The Association must retain its Financial Records for at least 7 years after the transactions covered by the records are completed.
- (c) The Association must allow the Board Members and the auditor to inspect those accounts at all reasonable times.

## 19.4 Financial reporting, audit and review

- (a) The Board must cause the Association to comply with all financial reporting obligations imposed on it under the Associations Act or any other applicable legislation.
- (b) Without limiting rule 19.4(a), the Board must cause the Association to:
  - (i) if it is a tier 1 association, prepare annual Financial Statements, presented under Part 5 of the Associations Act;
  - (ii) if it is a tier 2 association or tier 3 association, prepare an annual Financial Report, presented under Part 5 of the Associations Act;
  - (iii) have its Financial Statements or Financial Report reviewed or audited (as applicable) if:
    - (A) it is required under the Associations Act;
    - (B) it is directed by the Commissioner;
    - (C) the Members pass a resolution requiring it; or
    - (D) it is required as a condition of a funding arrangement; holding of a charitable collections licence or otherwise at law; and
  - (iv) if required to be presented for consideration under Part 5 of the Associations Act, present a copy of the report of the review or the auditor's report on the Financial Statements or Financial Report (as applicable) to the Annual General Meeting.

## 19.5 Financial Year

The Financial Year of the Association is the 12 month period starting on 1 July.

## 19.6 Inspection and custody of records

- (a) Subject to the Associations Act and to this Constitution, the Board must determine how the custody of the books, records, securities and other documents of the Association are held and whether and on what terms the books, records, securities and other documents of the Association will be open to the inspection of Members other than Board Members.
- (b) A Member other than a Board Member does not have the right to inspect any document of the Association except as provided by the Associations Act, or otherwise as authorised by the Board or by the Association in General Meeting.

## 20. Indemnity and insurance

### 20.1 Definition

In this rule **Officer** has the meaning given in section 3 of the Associations Act.

## **20.2 Association may indemnify Officers**

To the full extent permitted by law and without limiting the powers of the Association, the Association may indemnify any person who is or has been an Officer of the Association against all losses, liabilities, damages, costs, charges and expenses of any kind incurred by the Officer as an Officer of the Association.

## **20.3 Documentary indemnity and insurance policy**

To the extent permitted by the Associations Act and any applicable law and without limiting the powers of the Association, the Board may authorise the Association to, and the Association may, enter into any:

- (a) documentary indemnity in favour of; or
- (b) insurance policy for the benefit of,

a person who is, or has been, an Officer of the Association, which indemnity or insurance policy may be in such terms as the Board approves and, in particular, may apply to acts or omissions prior to or after the time of entering into the indemnity or policy.

## **21. Affiliation and membership of other similar organisations**

The Association may in a General Meeting determine to affiliate with or become a member of, or to accept affiliation or membership of, any organisation (including any regional or international association) having similar or like interests to the Association.

## **22. Winding up, cancellation and distribution of surplus property**

### **22.1 Definitions**

For the purposes of this rule, **Surplus Property** has the meaning given in section 3 of the Associations Act.

### **22.2 Surplus Property not to be distributed to Members**

If the Association is wound up or dissolved, any Surplus Property must not be distributed to a Member or a former Member of the Company, unless that Member or former Member is an organisation described in rule (a).

### **22.3 Surplus assets not to be distributed to Members**

If the Association is wound up or dissolved, or the Association's endorsement as a deductible gift recipient is revoked, any Surplus Property must not be distributed to a Member or a former Member, unless that Member or former Member is an organisation described in rule (a).

### **22.4 Distribution of Surplus Property**

- (a) Subject to the Associations Act, any other legislation applicable to the Association and any court order, any Surplus Property that remain after the Association is wound up or dissolved or the Association's endorsement as a deductible gift recipient is revoked must be distributed to one or more organisations:
  - (i) with objects similar to, or inclusive of, the Objects;

- (ii) which also prohibit the distribution of any Surplus Property to its members to at least the same extent as the Association; and
  - (iii) which is or are endorsed as deductible gift recipients under Division 30 of the Tax Act.
- (b) The decision as to the organisation or organisations to be given the Surplus Property must be made by the Board at or before the time of winding up or dissolution. If the Board does not make this decision, the Association may apply to the Supreme Court of Western Australia to make this decision.

## **23. Variation or amendment of Constitution**

This Constitution may be varied, amended or rescinded from time to time by Special Resolution in accordance with Division 2 of Part 3 of the Associations Act.