



*Constitution of the  
Mazda MX-5 Club of Western Australia Incorporated*

ABN 30 339 335 490

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This draft constitution has been rewritten to address the requirements of the *Associations Incorporation Act 2015* and *Associations Incorporation Regulations 2016* and, subject to adoption at the 2017 AGM, before presenting it to the Department of Commerce for their approval to replace the Constitution in place on 30 June 2016 under the *Associations Incorporation Act 1987*.

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Draft

# 1. PRELIMINARY

## 1.1 Name of Association

The name of the Association is the "Mazda MX-5 Club of Western Australia Incorporated" (in these rules called the "Association"), the short-title of which is "**MX-5 Club of WA**".

## 1.2 Objects of the Association

The objects and purposes of the Association are to:

- (a) Encourage the ownership and good keeping of Mazda MX-5 vehicles;
- (b) Promote the restoration, development, maintenance and use of all models of MX-5
- (c) Promote the practical, sporting and social aspects of motoring within its membership
- (d) Further the motoring interests of its Members generally and where necessary or desirable to join with other persons or clubs or associations to this end;
- (e) Encourage courtesy, good driving and safety on the roads of Australia; and
- (f) Encourage social contacts between Members and generally afford to them all the usual privileges, advantages and accommodation of an association.

# 2 INTERPRETATION

## 2.1 Definitions

In these Rules, unless the contrary intention appears:

**Act** means the *Associations Incorporation Act 2015*;

**Associate Member** means a Member who qualified under rule 5.2(d) with the rights referred to in rule 6.1(d);

**Association** means the incorporated association to which these Rules apply;

**AGM** means the annual general meeting convened under rule 23.1;

**Books of the Association**, includes the following —

- a) A register;
- b) Financial Records, Financial Statements or Financial Reports, however compiled, recorded or stored;
- c) A document;
- d) Any other record of information;

**By-laws** mean by-laws made by the Association under rule 25;

**Chairperson** means the person presiding over a meeting;

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

**Committee** means the management committee of the Association;

**Committee Meeting** means a meeting of the Committee;

**Country Membership** means a Member who qualified under rule 5.2(c) with the rights referred to in rule 6.1(e);

**Financial Records** has the meaning given to it in section 62 of the Act and 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** has the meaning given to it in sections 62 and 63 of the Act;

**Financial Statements** has the meaning given to it in section 62 of the Act;

**Financial Year** has the meaning given to it in rule 22;

**Foundation Membership** is available to anyone who joined the Association at its inaugural meeting on 6 November 1990 and who has remained in regular contact with the Association in the subsequent period;

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

**Governance Office Holder** means a Committee Member of the Association under rule 10.2(c);

**Honorary Life Membership** - may be offered to a person at the absolute discretion of the Committee providing that they comply with the conditions of Honorary Life Membership as defined in the By-laws;

**Mazda MX-5** means the two-seater convertible manufactured by Mazda and sold as Mazda MX-5, Mazda Roadster, Mazda Miata or Eunos Roadster and includes such vehicles with modifications;

**Member** means a person who is member of the Association;

**Membership Secretary** means the Governance Office Holder holding office as the Membership Secretary of the Association;

**Objects of the Association** are defined in Rule 1.2;

**Ordinary Committee Member** means a Committee Member who is not a Governance Office Holder of the Association under rule 10.2(c);

**Ordinary Member** means a Member who qualified under rule 5.2(b) with the rights referred to in rule 6.1;

**Register of Members** means the register of members referred to in section 53 of the Act;

**Poll** means voting conducted in written form which may include, but is not limited, to a secret ballot (as opposed to general agreement or a show of hands);

**President** means the Governance Office Holder holding office as the President of the Association;

**Rules** mean these rules of the Association, as in force for the time being;

**Secretary** means the Governance Office Holder holding office as the Secretary of the Association;

**Special General Meeting** means a General Meeting of the Association other than the AGM;

**Special Resolution** means a resolution passed by the Members at an AGM or Special General Meeting in accordance with section 51 of the Act;

**Subcommittee** means a subcommittee appointed by the Committee under rule 16;

**Surplus Property** has the meaning given to it in the Act and means the property remaining when the Association is wound up or cancelled after satisfying:

- (a) The debts and liabilities of the Association; and
  - (b) The costs, charges and expenses of winding up the Association,
- But does not include books pertaining to the management of the Association;

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

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

**Tier 3 Association** means an incorporated association to which section 64(3) of the Act applies;

**Treasurer** means the Governance Office Holder holding office as the Treasurer of the Association;  
and

**Vice President** means the Governance Office Holder holding office as the Vice President of the Association;

## 2.2 Interpretation

- (a) Words or expressions contained in these Rules shall be interpreted in accordance with the provisions of the Act as in force from time to time;
- (b) Words or expressions contained in these Rules importing any gender shall include the other genders, and any words importing persons shall, where the context and subject matter permit, include corporations.

## 2.3 Notices

- (a) A notice or other communication connected with these Rules has no legal effect unless it is in writing and given as follows:
  - (i) Delivered by hand to the nominated address of the addressee; or
  - (ii) Sent by post to the nominated postal address of the addressee; or
  - (iii) Sent by e-mail or any other method of electronic communication (including facsimile) to the nominated electronic address of the addressee.
- (b) Any notice given to a Member under these Rules, must be sent to Member's address as set out in the Register of Members referred to in rule 8.1.

## 3 POWERS OF THE ASSOCIATION

Subject to the Act, the Association may do all things necessary or convenient for carrying out its objects or purposes in a lawful manner.

## 4 NOT FOR PROFIT

- (a) The property and income of the Association must be applied solely towards promoting the objects or purposes of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any Member, except in good faith in promoting those objects or purposes; and
- (b) A payment may be made to a Member out of the funds of the Association only if it is authorised under rule 6.3.

## 5 BECOMING A MEMBER

### 5.1 Minimum Number of Members

The Association must have at least six Members with full voting rights.

### 5.2 Qualifications for Membership

- (a) Subject to rules 5.2(b) - (f) and rule 6.1(f) any person who supports the objects or purposes of the Association is eligible to become a Member;
- (b) Ordinary Membership will be for the owner of a Mazda MX-5 the details of which appears on the Register of Members. In addition, one other person (typically a partner or family member) will be entitled to purchase Ordinary Membership on the basis of the owner's Ordinary Membership provided that the other person also pays all the fees applicable to an Ordinary Member;

- (c) Country Membership is available to people who live outside the Perth metropolitan area, as defined by post codes 6000-6199 and 6800-6999, and so are unlikely to regularly attend Association events;
- (d) Associate Membership will cover all other options, including ex-owners and aspiring owners of a Mazda MX-5;
- (e) The Association must comply with all legal and regulatory obligations that apply to the Association when assessing eligibility of an applicant for membership; and
- (f) An individual who has not reached the age of 15 years is only eligible to be an Associate Member.

### **5.3 Applying for Membership**

- (a) A person who wants to become a Member must:
  - (i) Apply in writing to the Association in the form required by the Committee;
  - (ii) The application must be signed by the applicant;
  - (iii) The applicant must specify in the application the class of membership to which the application relates; and
  - (iv) The application shall be lodged with the Membership Secretary of the Association.

### **5.4 Becoming a Member**

- (a) An Applicant becomes a Member if:
  - (i) The Applicant is eligible for membership under rule 5.2;
  - (ii) The Applicant applies in writing to the Association under rule 5.3;
  - (iii) If the application is for Associate Membership the Membership Secretary has determined that accepting the application would not result in a breach of rule 6.1(f); and
  - (iv) The Applicant pays any fees due under rules 9.1 and 9.2.
- (b) The Applicant immediately becomes a Member and is entitled to exercise all the rights and privileges of membership, including the right to vote (if applicable), and must comply with all of the obligations of membership under these Rules, when rule 5.4(a) has been fulfilled.

### **5.5 Recording Membership in the Register of Members**

- (a) The Membership Secretary must enter a person's name in the Register of Members within 28 days after the person becomes a Member; and
- (b) The Membership Secretary shall, with as little delay as possible, notify the applicant of details of his membership of the Association.

## **6 LIABILITY AND ENTITLEMENTS OF MEMBERS**

### **6.1 Classes of Membership and Voting Rights**

- (a) The membership of the Association consists of:
  - (i) Ordinary Members;
  - (ii) Honorary Life Members;
  - (iii) Foundation Members;
  - (iv) Associate Members; and
  - (v) Country Members
- (b) A person can only belong to one class of membership;



- (c) An Ordinary Member, Honorary Life Member or Foundation Member has full voting rights and any other rights conferred on Members by these Rules or approved by resolution at a General Meeting or determined by the Committee;
- (d) An Associate Member has no right to vote, but has all other rights conferred on Members by these Rules or approved by resolution at a General Meeting or determined by the Committee;
- (e) Country Members receive the newsletter only, but are not eligible for any other benefit of MX-5 Club of WA membership until they become an Ordinary or Associate Member; and
- (f) To ensure that the focus of the Association remains with the Mazda MX-5 and their owners, the Committee will ensure that Associate and Country Members always comprise less than 30% of the total membership of the MX-5 Club of WA

## 6.2 Liability of Members

- (a) A Member is liable for:
  - (i) Their outstanding membership fees payable under rules 9.1 and 9.2, if any; and
  - (ii) Any damages to their own, the Association's, other Members or Third Parties possessions and properties as a result of their own actions while engaged in the activities of the Association.
- (b) Subject to rule 6.2(a), a Member is not liable, by reason of the person's membership, for the liabilities of the Association or the cost of winding up the Association; and
- (c) Rule 6.2(b) does not apply to liabilities incurred by or on behalf of the Association by the Member before incorporation.

## 6.3 Payment to Members

- (a) Subject to rule 6.3(b), no portion of the income or property of the Association may be paid directly or indirectly, by way of dividend, bonus or otherwise to the Members.
- (b) A payment to a Member out of the funds of the Association may be authorised if it is:
  - (i) The payment in good faith of remuneration to any officer, employee or Member in return for any services actually rendered to the Association or for goods supplied in the ordinary and usual course of business;
  - (ii) The payment of interest at a rate not exceeding the prevailing market rate published by the Reserve Bank of Australia as the "Cash Rate Target" from time to time on money borrowed from any Member;
  - (iii) The payment of reasonable and proper rent by the Association to a Member for premises leased by the Member to the Association; or
  - (iv) The reimbursement of expenses incurred by any Member or any Committee Member on behalf of the Association.

## 6.4 Membership Entitlements not Transferable

The rights of a Member are not transferable and end when membership ceases.

# 7 CEASING TO BE A MEMBER

## 7.1 Ending Membership

- (a) A person ceases to be a Member when any of the following takes place —
  - (i) The individual dies;
  - (ii) Ceases to be a Member under rule 9.2(d);
  - (iii) Resigns as a Member under rule 7.2; or

- (iv) Is expelled from the Association under rule 7.3.
- (b) For a period of one year after a person's membership ends, the Membership Secretary must keep a record of:
  - (i) The date on which a person ceases to be a Member under rule 7.1(a); and
  - (ii) The reason why the person ceases to be a Member.
- (c) Any fees paid will not be returned to the former Member.

## 7.2 Resigning as a Member

- (a) A Member may resign from membership of the Association by giving written notice of the resignation to the Membership Secretary.
- (b) The resignation takes effect:
  - (i) At the time the Membership Secretary receives the notice; or
  - (ii) If a later time is stated in the notice, at that later time.
- (c) Any Member who resigns from the Association remains liable to pay to the Association any outstanding fees, which may be recovered by the Association in a court of competent jurisdiction as a debt due to the Association by the Member.

## 7.3 Suspending or Expelling Members

- (a) The Committee may, by resolution, suspend or expel a Member from membership if:
  - (i) The Member refuses or neglects to comply with these Rules; or
  - (ii) The Member's conduct or behaviour is detrimental to the interests of the Association.
- (b) The Committee must hold a Committee Meeting to decide whether to suspend or expel a Member;
- (c) The Secretary must, not less than 28 days before the Committee Meeting referred to in rule 7.3(b), give written notice to the Member:
  - (i) Of the proposed suspension or expulsion and the grounds on which it is based;
  - (ii) Of the date, place and time of the Committee Meeting;
  - (iii) That the Member, or the Member's representative, may attend the Committee Meeting; and
  - (iv) That the Member, or the Member's representative, may address the Committee at the meeting and will be given a full and fair opportunity to state the Member's case orally, or in writing, or both.
- (d) At the Committee Meeting referred to in rule 7.3(b) the Committee must:
  - (i) Give the Member, or the Member's representative, a full and fair opportunity to state the Member's case orally;
  - (ii) Give due consideration to any written statement submitted by the Member; and
  - (iii) Determine whether or not the Member should be:
    - A. Expelled from the Association; or
    - B. Suspended from membership, and if so, the period that the Member should be suspended from membership.
- (e) Once the Committee has decided to suspend or expel a Member under rule 7.3(d), the Member is immediately suspended or expelled from membership;

- (f) Any Member who is suspended or expelled from membership remains liable to pay to the Association any outstanding fees which may be recovered by the Association in a court of competent jurisdiction as a debt due to the Association by the Member; and
- (g) The Membership Secretary must inform the Member in writing of the decision of the Committee and the reasons for the decision, within 7 days of the Committee Meeting referred to in rule 7.3(d).

#### **7.4 Right of Appeal of against Suspension or Expulsion**

If a Member is suspended or expelled under rule 7.3, the person may appeal the Committee's decision by giving written notice to the Secretary within 14 days of receiving notice of the Committee's decision under rule 7.3(g) requesting the appointment of a mediator under rule 28.4.

#### **7.5 Reinstatement of a Member**

If the Committee's decision to suspend or expel a Member is revoked under these Rules, any act performed by the Committee or Members in General Meeting during the period that the Member was suspended or expelled from membership under rule 7.3(e), is deemed to be valid, notwithstanding the Member's inability to exercise their rights or privileges of membership, including voting rights, during that period.

#### **7.6 When a Member is Suspended**

- (a) If a Member's membership is suspended under rule 7.3(e), the Membership Secretary must record in the Register of Members:
  - (i) The name of the Member that has been suspended from membership;
  - (ii) The date on which the suspension takes effect; and
  - (iii) The length of the suspension as determined by the Committee under rule 7.3(d)(iii)B.
- (b) A Member that has been suspended under rule 7.3(e) cannot exercise any rights or privileges of membership, including voting rights, during the period they are suspended from membership; and
- (c) Upon the expiry of the period of a Member's suspension, the Membership Secretary must record in the Register of Members that the Member is no longer suspended.

### **8 MEMBERSHIP REGISTER**

#### **8.1 Register of Members**

- (a) The Membership Secretary, or a person authorised by the Committee from time to time, must maintain a Register of Members and make sure that it is up to date;
- (b) The Register of Members must contain:
  - (i) The full name of each Member;
  - (ii) A contact postal, residential or email address of each Member;
  - (iii) The class of membership held by the Member;
  - (iv) If the Member is the owner of an Mazda MX-5, the details of that Mazda MX-5; and
  - (v) The date on which the person became a Member;
- (c) Any change in membership of the Association must be recorded in the Register of Members within 28 days after the change occurs; and
- (d) The Register of Members must be kept and maintained at the Membership Secretary's place of residence or at such other place as the Committee decides.

## **8.2 Inspecting the Register of Members**

- (a) Any Member is able to inspect the Register of Members free of charge, at such time and place as is mutually convenient to the Association and the Member;
- (b) A Member must contact the Membership Secretary to request to inspect the Register of Members; and
- (c) The Member may make a copy of details from the Register of Members but has no right to remove the Register of Members for that purpose.

## **8.3 Copy of the Register**

- (a) A Member may make a request in writing for a copy of the Register of Members;
- (b) The Committee may require a Member who requests a copy of the Register of Members 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;
- (c) The Association may provide a copy of the Register to the Member by electronic transmission; and
- (d) The Association may charge a reasonable fee to the Member for providing a copy of the Register, the amount to be determined by the Committee from time to time.

## **8.4 When Using the Information in the Register of Members is Prohibited**

A Member must not use or disclose the information on the Register of Members:

- (a) To gain access to information that a Member has deliberately denied them (that is, in the case of social, family or legal differences or disputes);
- (b) To contact, send material to the Association or a Member for the purpose of advertising for political, religious, charitable or commercial purposes unless the use of the information is approved by the Committee, or
- (c) For any other purpose unless the purpose:
  - (i) Is directly connected with the affairs of the Association; or
  - (ii) Relates to the provision of information to the Commissioner in accordance with a requirement of the Act.

# **9 MEMBERSHIP FEES**

## **9.1 Entrance Fee**

The Committee may from time to time determine the amount of the entrance fee, if any, to be paid by each Member or each class of Members upon becoming a Member.

## **9.2 Annual Membership Fee**

- (a) The Committee may from time to time determine:
  - (i) The amount of the annual membership fee, if any, to be paid by each Member or each class of Members;
  - (ii) Reduced annual membership fee for persons joining for the first time part way through the membership year; and
  - (iii) A reduced annual membership fee for Country Members.
- (b) Each Member must pay the Member's annual membership fee determined under rule 9.2(a) to the Treasurer, or a person authorised by the Committee to receive payments, on or before 1 July in each year;

- (c) If a Member pays the annual membership fee within 1 month after the due date, the Member retains all the rights and privileges of a Member for the purposes of these Rules during that time, including the right to vote;
- (d) Subject to rule 9.2(e), if a person fails to pay the annual Membership fee within 1 month after the due date, the person ceases to be a Member; and
- (e) If a person ceases to be a Member under rule 9.2(d), and subsequently offers to pay to the Association all the Member's outstanding fees, the Committee may, if it thinks fit, reinstate the Member's rights and privileges from the date on which the outstanding fees are paid, including the right to vote.

## **10 POWERS AND COMPOSITION OF THE COMMITTEE**

### **10.1 Powers of the Committee**

- (a) The governing body of the Association is to be called the Committee and it has authority to control and manage the affairs of the Association;
- (b) Subject to the Act, these Rules or lawful resolution passed by the Association in General Meeting, the Committee:
  - (i) May exercise all powers and functions as may be exercised by the Association, other than those powers and functions that are required by these Rules to be exercised by General Meetings of the Members; and
  - (ii) Has power to perform all acts and do all things as appear to the Committee to be necessary or desirable for the proper management of the business and affairs of the Association.

### **10.2 Committee Members**

- (a) The Committee is to consist of:
  - (i) The Governance Office Holders of the Association; and
  - (ii) Not less than one other Office holder.
- (b) The maximum number of other Office holders of the Committee is to be determined by the Committee.
- (c) The Governance Office Holders of the Association are:
  - (i) The President;
  - (ii) The Vice President;
  - (iii) The Secretary;
  - (iv) The Membership Secretary; and
  - (v) The Treasurer.
- (d) A Committee Member must be:
  - (i) A natural person;
  - (ii) Over 18 years in age; and
  - (iii) A Member.
- (e) No person shall be entitled to hold more than one of the positions set out in rule 10.2(c) at any time;
- (f) No person shall be entitled to hold a position on the Committee if the person has been convicted of, or imprisoned in the previous five years for:

- (i) An indictable offence in relation to the promotion, formation or management of a body corporate;
- (ii) An offence involving fraud or dishonesty punishable by imprisonment for a period of not less than three months; or
- (iii) An offence under Part 4 Division 3 or section 127 of the Act;

Unless the person has obtained the consent of the Commissioner;

- (g) No person shall be entitled to hold a position on the Committee if the person is, according to the Interpretation Act section 13D, a bankrupt or a person whose affairs are under insolvency laws unless the person has obtained the consent of the Commissioner; and
- (h) To ensure that the focus of the Association remains with the Mazda MX-5 and their owners, the Committee will ensure that Associate and Country Members always comprise less than 30% of the Committee of the MX-5 Club of WA. Associate Members or Country Members shall not be entitled to hold the position of President.

## 11 ROLE AND RESPONSIBILITIES OF COMMITTEE MEMBERS

### 11.1 Obligations of the Committee

The Committee must take all reasonable steps to ensure the Association complies with its obligations under the Act and these Rules.

### 11.2 Responsibilities of Committee Members

- (a) A Committee Member must exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise in the circumstances;
- (b) A Committee Member must exercise his or her powers and discharge his or her duties in good faith in the best interests of the Association and for a proper purpose;
- (c) A Committee Member or former Committee Member must not improperly use information obtained because he or she is or was a Committee Member to:
  - (i) Gain an advantage for himself or herself or another person; or
  - (ii) Cause detriment to the Association.
- (d) A Committee Member or former Committee Member must not improperly use his or her position to:
  - (i) Gain an advantage for himself or herself or another person; or
  - (ii) Cause detriment to the Association.
- (e) A Committee Member having any material personal interest in a matter being considered at a Committee Meeting must:
  - (i) As soon as he or she becomes aware of that interest, disclose the nature and extent of his or her interest to the Committee;
  - (ii) Disclose the nature and extent of the interest at the next General Meeting of the Association; and
  - (iii) Not be present while the matter is being considered at the Committee Meeting or vote on the matter.
- (f) Rule 11.2(e) does not apply in respect of a material personal interest that:
  - (i) Exists only because the Committee Member belongs to a class of persons for whose benefit the Association is established; or

- (ii) The Committee Member has in common with all, or a substantial proportion of, the Members of the Association.
- (g) The Secretary must record every disclosure made by a Committee Member under rule 11.2(e) in the minutes of the Committee Meeting at which the disclosure is made; and
- (h) No Committee Member shall make any public statement or comment or cause to be published any words or article concerning the conduct of the Association unless the person is authorised by the Committee to do so and such authority is recorded in the minutes of the Committee Meeting.

### **11.3 President**

The President:

- (a) Must consult with the Secretary regarding the business to be conducted at each Committee Meeting and General Meeting;
- (b) The President has the powers and duties relating to convening and being the Chairperson at Committee Meetings and at General Meetings provided for in these Rules;
- (c) May convene special meetings of the Committee under rule 14.1(c);
- (d) Must ensure that the minutes of a General Meeting or Committee Meeting are reviewed and signed as correct under rule 20(b); and
- (e) Must ensure that the Commissioner is provided with the annual information statement as required under regulation 15 of the Associations Incorporation Regulations 2016.

### **11.4 Vice-President**

The Vice-President shall assist the President generally and assume the duties of the President if the latter is unable to perform any or all of the duties set out in rule 11.3.

### **11.5 Secretary**

The Secretary has the following duties:

- (a) Dealing with the Association's correspondence;
- (b) Consulting with the President regarding the business to be conducted at each Committee Meeting and General Meeting;
- (c) Preparing the notices required for meetings and for the business to be conducted at meetings;
- (d) Maintaining on behalf of the Association an up-to-date copy of these Rules, as required under section 35(1) of the Act;
- (e) Unless another Member is authorised by the Committee to do so, maintaining on behalf of the Association a record of Committee Members and other persons authorised to act on behalf of the Association, as required under section 58(2) of the Act;
- (f) Ensuring the safe custody of the Books of the Association, other than the Financial Records, Financial Statements, Financial Reports and the Register of Members, as applicable to the Association;
- (g) Maintaining full and accurate minutes of Committee Meetings and General Meetings; and
- (h) Carrying out any other duty given to the Secretary under these Rules or by the Committee.

### **11.6 Membership Secretary**

The Membership Secretary must:

- (a) Maintain on behalf of the Association the Register of Members, and recording in it any changes in the membership, as required under section 53(1) of the Act; and

- (b) Ensure the safe custody of the Association's Register of Members.

### **11.7 Treasurer**

The Treasurer must:

- (a) Ensure any amounts payable to the Association are collected;
- (b) Ensure that any amounts paid to the Association are credited to the appropriate account of the Association, as directed by the Committee;
- (c) Ensure that any payments to be made by the Association that have been authorised by the Committee or at a General Meeting are made on time;
- (d) Ensure that the Association complies with the relevant requirements of Part 5 of the Act;
- (e) Ensure the safe custody of the Association's Financial Records, Financial Statements and Financial Reports, as applicable to the Association;
- (f) if the Association is a Tier 1 Association, coordinating the preparation of the Association's Financial Statements before their submission to the Association's AGM;
- (g) if the Association is a Tier 2 Association or Tier 3 Association, coordinating the preparation of the Association's Financial Report before its submission to the Association's AGM;
- (h) Provide any assistance required by an auditor or reviewer conducting an audit or review of the Association's Financial Statements or Financial Report under Part 5 Division 5 of the Act; and
- (i) Carry out any other duty given to the Treasurer under these Rules or by the Committee.

### **11.8 Record of Office Holders**

- (a) The Secretary or a person authorised by the Committee from time to time must maintain a record of office holders;
- (b) The record of office holders must include:
  - (i) The full name of each office holder;
  - (ii) The office held and the dates of appointment and (if applicable) cessation of the appointment; and
  - (iii) A current contact postal, residential or email address of each office holder.
- (c) The record of office holders must be kept and maintained at the Secretary's place of residence, or at such other place as the Committee decides.

### **11.9 Inspecting the Record of Office Holders**

- (a) Any Member is able to inspect the record of office holders free of charge, at such time and place as is mutually convenient to the Association and the Member; and
- (b) The Member may make a copy of details from the record of office holders but has no right to remove the record for that purpose.

## **12 APPOINTING COMMITTEE MEMBERS**

### **12.1 Appointment to the Committee**

Committee Members are appointed to the Committee by:

- (a) Election at an AGM; or
- (b) Appointment to fill a casual vacancy under rule 13.1(b).



## 12.2 Nominating for Membership of the Committee

- (a) A Member who wishes to be a Committee Member must be nominated by one other Member as a candidate for election;
- (b) Nominations for election to the Committee shall close 7 days before the AGM;
- (c) The Secretary must send a notice calling for nominations for election to the Committee and specifying the date for the close of nominations to all Members at least 14 days before the date for the close of nominations.
- (d) The nomination for election must be:
  - (i) In writing;
  - (ii) State the position for which the Member is nominating; and
  - (iii) Delivered to the Secretary on or before the date for the close of nominations.
- (e) If a nomination for election to the Committee is not made in accordance with rules 12.2(a)-(d) the nomination is to be deemed invalid and the Member will not be eligible for election unless rule 12.3(c) takes effect.

## 12.3 Electing Committee Members

- (a) If the number of valid nominations received under rule 12.2 is equal to the number of vacancies to be filled for the relevant position on the Committee, the Member nominated shall be deemed to be elected at the AGM;
- (b) If the number of valid nominations exceeds the number of vacancies to be filled for the relevant position on the Committee, elections for the relevant positions must be conducted at the AGM;
- (c) If there are not enough valid nominations to fill the number of vacancies for the relevant positions on the Committee, the candidates nominated (if any) shall be deemed to be elected and further nominations may be received from the floor of the AGM;
- (d) Where the number of nominations from the floor exceeds the remaining number of vacancies on the Committee, elections for those positions must be conducted;
- (e) If an insufficient number of nominations are received from the floor for the number of vacancies on the Committee that remain, each relevant position on the Committee is declared vacant by the Chairperson at the AGM and rule 13.1(b) applies; and
- (f) The elections for office holders or ordinary Committee Member are to be conducted at the AGM in the manner directed by the Committee.

## 12.4 Voting in Elections for Membership of the Committee

- (a) Subject to rule 19.2(c), each Member present and eligible to vote at the AGM may vote for one candidate for each vacant position on the Committee; and
- (b) A Member who nominates for election or re-election may vote for himself or herself.

## 12.5 Term of Office of Committee Members

- (a) At each AGM of the Association, the appointment of the Committee Members at the AGM will be for a term of one year;
- (b) Subject to rule 12.5(a), a Committee Member's term will commence on the date of his or her:
  - (i) Election at an AGM; or
  - (ii) Appointment to fill a casual vacancy that arises under rule 13.1(b).
- (c) All retiring Committee Members are eligible, on nomination under rule 12.2, for re-election.

## 13 CEASING TO BE A MEMBER OF THE MANAGEMENT COMMITTEE

### 13.1 Vacant Positions on the Committee

- (a) A casual vacancy occurs in the office of a Committee Member and that office becomes vacant if the Committee Member:
- (i) Dies;
  - (ii) Ceases to be a Member;
  - (iii) Becomes disqualified from holding a position under rule 10.2(f) or (g) as a result of bankruptcy or conviction of a relevant criminal offence;
  - (iv) Becomes permanently incapacitated by mental or physical ill-health;
  - (v) Resigns from office under rule 13.2;
  - (vi) Is removed from office under rule 13.3; or
  - (vii) Is absent from more than:
    - A. Three consecutive Committee Meetings without a good reason; or
    - B. Three Committee Meetings in the same Financial Year without tendering an apology to the Chairperson at each of those Committee Meetings, where the Member received notice of the meetings
- And the Committee has resolved to declare the office vacant;
- (b) If a position on the Committee is declared vacant under rule 12.3(e), or there is a casual vacancy within the meaning of rule 13.1(a), the continuing Committee Members may:
- (i) Appoint a Member to fill that vacancy until the conclusion of the next AGM; and
  - (ii) Subject to rule 13.1(c); act despite the vacant position on the Committee.
- (c) If the number of Committee Members is less than the number fixed under rule 14.4(a) as the quorum for Committee Meetings, the continuing Committee Members may act only to:
- (i) Increase the number of Members on the Committee to the number required for a quorum; or
  - (ii) Convene a General Meeting of the Association.

### 13.2 Resigning from the Committee

- (a) A Committee Member may resign from the Committee by giving written notice of resignation to the Secretary, or if the Committee Member is the Secretary, to the President;
- (b) The Committee Member resigns:
- (i) At the time the notice is received by the Secretary or President under rule 13.2(a); or
  - (ii) If a later time is stated in the notice, at the later time.

### 13.3 Removal from Committee

- (a) Subject to rule 13.1(a)(vii), a Committee Member may only be removed from his or her position on the Committee by resolution at a General Meeting of the Association if a majority of the Members present and eligible to vote at the meeting vote in favour of the removal;
- (b) The Committee Member who faces removal from the Committee must be given a full and fair opportunity at the General Meeting to decide the proposed resolution, to state his or her case as to why the Member should not be removed from his or her position on the Committee; and
- (c) If all Committee Members are removed by resolution at a General Meeting, the Members must, at the same General Meeting, elect an interim Committee. The interim Committee must, within

two months, convene a General Meeting of the Association for the purpose of electing a new Committee.

## **14 COMMITTEE MEETINGS**

### **14.1 Meetings of the Committee**

- (a) The Committee must meet at least four times in each year;
- (b) The Committee is to determine the place and time of all Committee Meetings; and
- (c) Special meetings of the Committee may be convened under rule 14.2 by:
  - (i) The President; or
  - (ii) Any two Committee Members.

### **14.2 Notice of Committee Meetings**

- (a) The Secretary must give each Committee Member at least 48 hours' notice of each Committee Meeting before the time appointed for holding the meeting;
- (b) Notice of a Committee Meeting must specify the general nature of the business to be transacted at the meeting;
- (c) Subject to rule 14.2(d), only the business specified on the notice of the Committee Meeting is to be conducted at that meeting; and
- (d) Urgent business may be conducted at Committee Meetings if the Committee Members present at a Committee Meeting unanimously agree to treat the business as urgent.

### **14.3 Chairperson at Committee Meetings**

- (a) The President or, in the President's absence, the Vice-President is to be the Chairperson of each Committee Meeting; and
- (b) If the President and the Vice-President are absent or unwilling to act, the remaining Committee Members must choose one of their number as Chairperson for the Committee Meeting.

### **14.4 Procedure of the Committee Meeting**

- (a) Any 6 Committee Members constitute a quorum for the conduct of the business at a Committee Meeting. The Committee cannot conduct business unless a quorum is present;
- (b) If, within half an hour of the time appointed for the meeting, a quorum is not present the meeting is to stand adjourned to the next scheduled meeting;
- (c) If at a meeting adjourned under rule 14.4(b), a quorum is not present within half an hour of the time appointed for the meeting, the Committee Members personally present will constitute a quorum;
- (d) Committee Meetings may take place:
  - (i) Where the Committee Members are physically present together; or
  - (ii) Where the Committee Members are able to communicate by using any technology that reasonably allows the Committee Member to participate fully in discussions as they happen in the Committee Meeting and in making decisions, provided that the participation of the Member in the Committee Meeting must be made known to all other Members.
- (e) A Committee Member who participates in a meeting as set out in rule 14.4(d)(ii):
  - (i) Is deemed to be present at the Committee Meeting; and
  - (ii) Continues to be present at the meeting for the purposes of establishing a quorum,

Until the Committee Member notifies the other Committee Members that he or she is no longer taking part in the Committee Meeting;

- (f) Subject to these Rules, the Committee Members present at the Committee Meeting are to determine the procedure and order of business to be followed at a Committee Meeting;
- (g) All Committee Members have the right to attend and vote at Committee Meetings;
- (h) All Members, or other guests, may attend Committee Meetings if invited by the Committee but the person shall not have any right to comment without invitation, or any right to vote, or to be provided with copies of any agenda, minutes of meetings, or documents presented to such meetings; and
- (i) The Secretary or a person authorised by the Committee from time to time must keep minutes of the resolutions and proceedings of all Committee Meetings together with a record of the names of persons present at each meeting.

### **14.5 Voting at Committee Meetings**

- (a) Each Committee Member present at a Committee Meeting has a deliberate vote;
- (b) A question arising at a Committee Meeting is to be decided by a majority of votes, but if there is an equality of votes, the Chairperson of the Committee Meeting as set out in rule 14.3 is entitled to exercise a second or casting vote;
- (c) Decisions may be made by general agreement or a show of hands; and
- (d) A Poll by secret ballot may be used if the Committee prefers to determine a matter in this way and the Chairperson at the Committee Meeting is to oversee the ballot.

### **14.6 Circular Resolutions of the Committee**

The Committee may pass a circular resolution without a Committee Meeting being held:

- (a) The Secretary, President or Vice-President may initiate a circular resolution by email to the Committee Members;
- (b) Committee Members may agree to the resolution by sending a reply email, including the text of the resolution in their reply, to that effect;
- (c) A circular resolution is passed if the majority of Committee Members entitled to vote on the resolution agree to the resolution in the manner set out in rule 14.6(b); and
- (d) The passing of a circular resolution shall be recorded in the minutes of the following Committee Meeting.

### **14.7 Acts not Affected by Defects or Disqualifications**

Any act performed by the Committee, a Subcommittee or a person acting as a Committee Member is deemed to be valid even if the act was performed when:

- (a) There was a defect in the appointment of a Committee Member, Subcommittee or person holding a subsidiary office; or
- (b) A Committee Member, a Subcommittee Member or a person holding a subsidiary office was disqualified from being a Member.

## **15 REMUNERATION OF COMMITTEE MEMBERS**

### **15.1 Payment of Expenses**

- (a) The Association may pay a Committee Member's travelling and other expenses as properly incurred:
  - (i) In attending Committee Meetings or Subcommittee Meetings;

- (ii) In attending any General Meetings of the Association; and
  - (iii) In connection with the Association's business.
- (b) Committee Members must not receive any remuneration for their services as Committee Members other than as described at rule 15.1(a).

## **15.2 Authorisation of Payments**

Committee Members must not receive the payment unless it is authorised by a resolution of the Association.

# **16 SUBCOMMITTEES AND DELEGATION**

## **16.1 Appointment of Subcommittee**

- (a) The Committee may appoint one or more Subcommittees as considered appropriate by the Committee from time to time to assist with the conduct of the Association's operations;
- (b) Subcommittees may comprise (in such numbers as the Committee determines) Members and non-Members; and
- (c) Subject to these Rules, the Subcommittee Members present at the Subcommittee meeting are to determine the procedure and order of business to be followed at the Subcommittee meeting.

## **16.2 Delegation by Committee to Subcommittee**

- (a) The Committee may delegate, in writing, to any or all of the Subcommittees, any authority, power or functions and may cancel any authority, powers or functions, as the Committee sees fit from time to time; and
- (b) Despite any delegation under this rule, the Committee may continue to exercise all its functions, including any function that has been delegated to a Subcommittee and remains responsible for the exercise of those functions at all times.

## **16.3 Delegation to Subsidiary Offices**

- (a) The Committee may create and fill such subsidiary office as may be necessary for the proper and efficient management of the Association's affairs;
- (b) The Committee may delegate, in writing, to any person holding a subsidiary office any authority, power or functions and may cancel any authority, powers or functions, as the Committee sees fit from time to time; and
- (c) Despite any delegation under this rule, the Committee may continue to exercise all its functions, including any function that has been delegated to a subsidiary office and remains responsible for the exercise of those functions at all times.

# **17 GENERAL MEETINGS**

## **17.1 Procedure for General Meetings**

- (a) General Meetings may take place:
  - (i) Where the Members are physically present together; or
  - (ii) Where the Members are able to communicate by using any technology that reasonably allows the Member to participate fully in discussions as they happen in the General Meeting and in making any decisions, provided that the participation of the Member in the General Meeting must be made known to all other Members.
- (b) A Member who participates in a meeting as set out in rule 17.1(a)(ii):
  - (i) Is deemed to be present at the General Meeting; and

- (ii) Continues to be present at the meeting for the purposes of establishing a quorum, Until the Member notifies the other Members that he or she is no longer taking part in the General Meeting.

## 17.2 Quorum for General Meetings

- (a) Ten members or 50% of the membership (whichever is the lesser) personally present (being Members entitled to vote under these Rules at a General Meeting) will constitute a quorum for the conduct of business at a General Meeting;
- (b) Subject to rules 17.2(c) and (d), no business is to be conducted at a General Meeting unless a quorum of Members entitled to vote under these Rules is present at the time when the meeting is considering that item;
- (c) If, within half an hour of the time appointed for the commencement of a General Meeting, a quorum is not present:
  - (i) In the case of a Special General Meeting, the meeting lapses; or
  - (ii) In the case of an AGM, the meeting is to stand adjourned to:
    - A. The same time and day in the following week; and
    - B. The same place unless another place is specified by the Chairperson at the time of the adjournment or by written notice to the Members given before the day to which the meeting is adjourned.
- (d) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the commencement of the meeting, the Members present are to constitute a quorum.

## 17.3 Notice of General Meetings and Motions

- (a) The Secretary must give at least:
  - (i) 14 days' notice of a General Meeting to each Member, or
  - (ii) 21 days' notice of a General Meeting to each Member if a Special Resolution is proposed to be moved at the General Meeting.
- (b) The notice convening a General Meeting must specify:
  - (i) The place, date and time of the meeting; and
  - (ii) The particulars and order of the business to be conducted at the meeting.
- (c) The notice convening a General Meeting or any notice of motion must be issued in the manner prescribed by rule 2.3.
- (d) The notice must:
  - (i) State that the Member may appoint another Member who is entitled to vote at the meeting as a proxy for the meeting; and
  - (ii) Include a copy of any form that the Committee has approved for the appointment of a proxy.

## 17.4 Chairperson

- (a) The President or, in the President's absence, the Vice-President is to be the Chairperson of each General Meeting; and
- (b) If the President and the Vice-President are absent or unwilling to act, the remaining Committee Members must choose one of their number as Chairperson at the General Meeting.

## **17.5 Adjournment of General Meetings**

- (a) The Chairperson at a General Meeting, at which a quorum is present, may adjourn the meetings from time to time and place to place with the consent of a majority of Members present at the meeting;
- (b) No business is to be conducted at an adjourned meeting other than the unfinished business from the meeting that was adjourned; and
- (c) When a General Meeting is adjourned for 14 days or more, the Secretary must give notice of the adjourned meeting in accordance with rules 2.3 and 17.3 as if that General Meeting was a new General Meeting.

## **18 SPECIAL GENERAL MEETINGS**

### **18.1 Special General Meeting**

- (a) The Committee may at any time convene a Special General Meeting of the Association; and
- (b) The Secretary must convene a Special General Meeting of the Association within 28 days after receiving a written request to do so from at least 20 percent of the total number of Members.

### **18.2 Request for Special General Meeting**

A request by the Members for a Special General Meeting must:

- (a) State the purpose of the meeting;
- (b) Be signed by the required number of Members making the request as specified in rule 18.1(b); and
- (c) Be lodged with the Secretary.

### **18.3 Failure to Convene Special General Meeting**

- (a) If the Secretary fails to convene a Special General Meeting within the 28 days referred to in rule 18.1(b), the Members who made the request; may convene a Special General Meeting within 3 months after the original request was lodged as if the Members were the Committee; and
- (b) A Special General Meeting must be convened in the same or substantially the same manner as General Meetings are convened by the Committee and the Association must pay the reasonable expenses of convening and holding the Special General Meeting.

## **19 MAKING DECISIONS AT GENERAL MEETINGS**

### **19.1 Special Resolutions**

- (a) A Special Resolution must be moved at a General Meeting where notice of the Special Resolution has been given under rule 19.1(c);
- (b) A Special Resolution of the Association is required to:
  - (i) Amend the name of the Association;
  - (ii) Amend the Rules, under rule 24.2;
  - (iii) Affiliate the Association with another body;
  - (iv) Transfer the incorporation of the Association;
  - (v) Amalgamate the Association with one or more other incorporated associations;
  - (vi) To be wound up voluntarily (section 121(2)) or by the Supreme Court (section 124(a) and Schedule 4 item 9);
  - (vii) Cancel incorporation; or

- (viii) To request the Commissioner to apply to the State Administrative Tribunal under section 109 of the Act for the appointment of a statutory manager.
- (c) Notice of a Special Resolution must:
  - (i) Be in writing;
  - (ii) Include the place, date and time of the meeting;
  - (iii) Include the intention to propose a Special Resolution;
  - (iv) Set out the wording of the proposed Special Resolution; and
  - (v) Be given in accordance with rule 2.3
- (d) If notice is not given in accordance with rule 19.1(c), the Special Resolution will have no effect; and
- (e) A Special Resolution must be passed at a General Meeting at which there is a quorum and be supported by the votes of not less than three-fourths of the Members present, in person or by proxy, and eligible to cast a vote at the meeting.

## 19.2 Voting at meetings

- (a) Subject to rule 6.1 each Ordinary Member has one vote at a General Meeting of the Association;
- (b) A person casts a vote at a meeting either by:
  - (i) Voting at the meeting either in person or through the use of technology as under rule 17.1(a)(ii); or
  - (ii) By proxy.
- (c) A Member or their proxy is not entitled to vote at any General Meeting of the Association unless:
  - (i) All money due and payable by the Member or their proxy to the Association has been paid in accordance with rules 9.1 and 9.2.
  - (ii) They were a Member as at the date the notice of the meeting was sent out under rule 17.3.
- (d) Except in the case of a Special Resolution, a motion is carried if a majority of the Ordinary Members present at a General Meeting vote in favour of the motion; and
- (e) In the case of an equality of votes at a General Meeting, the Chairperson of the meeting is entitled to exercise a second or casting vote.

## 19.3 Proxies

- (a) Subject to rule 19.3(b) each Member is entitled to appoint in writing, a natural person who is also a Member of the Association to be the Member's proxy, and to vote and speak on the Member's behalf at a General Meeting;
- (b) No Member may be appointed the proxy for more than 5 other Members;
- (c) The appointment of a proxy must be in writing and signed by the Member making the appointment;
- (d) The Member appointing the proxy may give specific directions as to how the proxy is to vote on the Member's behalf;
- (e) If no instructions are given to the proxy, the proxy may vote on behalf of the Member in any matter as the proxy sees fit;
- (f) If the Committee has approved a form for the appointment of a proxy, the Member may use that form or any other form:
  - (i) That clearly identifies the person appointed as the Member's proxy; and
  - (ii) That has been signed by the Member.



- (g) A form appointing a proxy must be given to the Secretary before the commencement of the General Meeting for which the proxy is appointed; and
- (h) A form appointing a proxy sent by post or electronically is of no effect unless it is received by the Association not later than 24 hours before the commencement of the meeting.

#### **19.4 Manner of Determining Whether Resolution Carried**

- (a) Unless a Poll is demanded under rule 19.5, if a question arising at a General Meeting of the Association is determined by general agreement or a show of hands, a declaration must be made by the Chairperson of the General Meeting that the resolution has been:
  - (i) Carried unanimously;
  - (ii) Carried by a particular majority; or
  - (iii) Lost.
- (b) If the declaration relates to a Special Resolution, then subject to rule 19.1(c) and (e), the declaration should state that a Special Resolution has been determined;
- (c) The declaration made under rule 19.5(a) must be entered into the meeting minutes; and
- (d) The entry in the meeting minutes under rule 19.5(c) is evidence of the fact that the resolution has been determined, without proof of the number or proportion of the votes recorded in favour of or against that resolution.

#### **19.5 Poll at General Meetings**

- (a) At a General Meeting, a Poll on any question may be demanded by either:
  - (i) The Chairperson of the meeting; or
  - (ii) At least three Members present in person or by proxy.
- (b) If a Poll is demanded at a General Meeting, the Poll must be taken in a manner as the Chairperson of the meeting directs and a declaration by the Chairperson of the result of the Poll is evidence of the matter so declared; and
- (c) If a Poll is demanded at a General Meeting, the Poll must be taken:
  - (i) Immediately in the case of a Poll which relates to electing a Chairperson to preside over the meeting;
  - (ii) Immediately in the case of a Poll which relates to adjourning the meeting; or
  - (iii) In any other case, in the manner and time before the close of the meeting as the Chairperson directs.

### **20 MINUTES OF MEETINGS**

- (a) The Secretary or a person authorised by the Committee from time to time must keep minutes of the resolutions and proceedings of all General Meetings and Committee Meetings together with a record of the names of persons present at each meeting;
- (b) The President must ensure that the minutes of a General Meeting or Committee Meeting under rule 20(a) are reviewed and signed as correct by:
  - (i) The President of the General Meeting or Committee Meeting to which those minutes relate; or
  - (ii) The President of the next succeeding General Meeting or Committee Meeting.
- (c) When minutes have been entered and signed as correct under this rule, they are, until the contrary is proved, evidence that:

- (i) The General Meeting or Committee Meeting to which they relate was duly convened and held;
  - (ii) All proceedings recorded as having taken place at the General Meeting or Committee Meeting did in fact take place at the meeting; and
  - (iii) All appointments or elections purporting to have been made at the meeting have been validly made.
- (d) The minutes of General Meetings may be inspected by a Member under rule 27.2; and
- (e) The minutes of Committee Meetings may be inspected by a Member under rule 27.2 unless the Committee determines that the minutes of Committee Meetings generally, or the minutes of a specific Committee Meeting are not to be available for inspection.

## **21 FUNDS AND ACCOUNTS**

### **21.1 Control of Funds**

- (a) The funds of the Association must be kept in account(s) in the name of the Association in financial institution(s) determined by the Committee;
- (b) The funds of the Association are to be used in pursuance of the Objects of the Association;
- (c) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments shall be signed by any two authorised cheque signatories as authorised by the Committee, one of whom should be either the Treasurer or President;
- (d) All payments within approved budget, as revised from time to time by the Committee, must be proposed by the Treasurer and approved by email by one or more authorised cheque signatories; and
- (e) All expenditure above the maximum amount set by the Committee from time to time must be approved or ratified at a Committee Meeting.

### **21.2 Source of Association Funds**

- (a) The funds of the Association may be derived from entrance fees and annual membership fees of Members, donations, fund raising activities, grants, interest, and any other sources approved by the Committee; and
- (b) The Treasurer must, as soon as practicable, deposit all money received by the Association, to the credit of the Association's bank account, without deduction, unless the Treasurer elects to retain some or all of it in petty cash.

### **21.3 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 Act.
- (b) The Association must retain its Financial Records for at least 7 years after the transactions covered by the records are completed.

### **21.4 Financial Statements and Financial Reports**

- (a) For each Financial Year, the Committee must ensure that the requirements imposed on the Association under Part 5 of the Act relating to the Financial Statements or Financial Report of the Association are met; and
- (b) Without limiting rule 21.4(a), those requirements include—
  - (i) If the Association is a Tier 1 Association, the preparation of the Financial Statements; and

- (ii) If the Association is a Tier 2 Association or Tier 3 Association, the preparation of the Financial Report; and
- (iii) If required, the review or auditing of the Financial Statements or Financial Report, as applicable; and
- (iv) The presentation to the AGM of the Financial Statements or Financial Report, as applicable; and
- (v) The lodgement of the annual return with the Commissioner.

## **21.5 Review or Audit of Financial Statements or Financial Report**

The Association must ensure that a review or audit is undertaken of the Financial Statements or Financial Report of the Association if:

- (a) The Association is a Tier 2 Association or Tier 3 Association;
- (b) The By-laws of the Association require a review or audit;
- (c) The Members require a review or audit by resolution at a General Meeting;
- (d) An audit or review is directed by the Commissioner; or
- (e) An audit or review is required as a condition of a funding arrangement; or holding of a charitable collections licence.

## **22 FINANCIAL YEAR OF THE ASSOCIATION**

The Financial Year of the Association is the period of 12 months commencing on 1 July and ending on 30 June of each year.

## **23 ANNUAL GENERAL MEETINGS**

### **23.1 Annual General Meeting**

- (a) Subject to rule 23.1(b), the Association must convene an AGM each calendar year:
  - (i) Within 6 months after the end of the Association's Financial Year; or
  - (ii) Within a longer period as the Commissioner may allow.
- (b) If the Association requires the approval from the Commissioner to hold its AGM within a longer period under rule 23.1(a)(ii), the Secretary must apply to the Commissioner no later than four months after the end of the Association's Financial Year.

### **23.2 Notice of AGM**

The notice convening an AGM must specify that it is the AGM of the Association and otherwise must comply with rules 2.3 and 17.3 (as applicable).

### **23.3 Business to be Conducted at AGM**

- (a) Subject to rule 23.1, the AGM of the Association is to be convened on a date, time and place as the Committee decides.
- (b) At each AGM of the Association, the Association:
  - (i) Must confirm the minutes of the last preceding AGM and of any Special General Meeting held since that meeting if the minutes of that Special General Meeting have not yet been confirmed;
  - (ii) If the Association is a Tier 1 Association, must receive the Financial Statements of the Association for the preceding Financial Year;
  - (iii) If the Association is a Tier 2 Association or a Tier 3 Association, must receive the Financial Report of the Association for the preceding Financial Year;

- (iv) If applicable, must appoint or remove a reviewer or auditor in accordance with the Act;
- (v) If applicable, must present a copy of the report of the review or the auditor's report to the Association; and
- (vi) Must elect or appoint the Governance Office Holders and Ordinary Committee Members.

## **24 RULES OF THE ASSOCIATION**

### **24.1 Rules of the Association**

- (a) These Rules bind every Member and the Association and each Member agrees to comply with these Rules;
- (b) The Association must provide, free of charge, a copy of the Rules in force, at the time membership commences, to each person who becomes a Member under rule 5.4, by:
  - (i) Giving the Rules to the Member by electronic transmission; or
  - (ii) Notifying the Member of the details of a website where the Rules may be downloaded.
  - (iii) If a Member requests the Association to give the Rules in hard copy form, the Association must give the Rules to the Member in that manner.
- (c) The Association must keep a current copy of the Rules.

### **24.2 Amendment of Rules, Name and Objects**

- (a) The Association may alter, rescind or add to these Rules by Special Resolution in accordance with rule 19.1 and not otherwise;
- (b) When a Special Resolution amending the Rules is passed, the required documents must be lodged with the Commissioner within:
  - (i) One month after the Special Resolution is passed; or
  - (ii) A longer period as the Commissioner may allow.
- (c) Subject to rule 24.2(d), an amendment to the Rules does not take effect until the required documents are lodged with the Commissioner under rule 24.2(b); and
- (d) An amendment to the Rules that changes or has the effect of changing:
  - (i) The name of the Association; or
  - (ii) The objects or purposes of the Association,Does not take effect until the required documents are lodged with the Commissioner under rule 24.2(b) and the approval of the Commissioner is given in writing.

## **25 BY-LAWS OF THE ASSOCIATION**

- (a) The By-laws of the Association are complementary to these Rules and are a way of documenting Association decisions (policy) and guidelines for Association procedures without the formality of amendments to the Rules;
- (b) If a conflict arises between the By-laws and these Rules then the Rules prevail;
- (c) By-laws may be amended by the Committee. When a change occurs it is recorded in the meeting minutes and the revised By-laws are posted on the Association's website;
- (d) The By-laws:
  - (i) Do not form part of the Rules;
  - (ii) May make provision for:

- A. Classes of membership and the rights and obligations that apply to each class of membership;
  - B. Requirements for financial reporting, financial accountability or audit of accounts in addition to those prescribed by the Act and the Rules;
  - C. Restrictions on the powers of the Committee including the power to dispose of assets; and
  - D. Any other matter that the Association considers necessary or appropriate.
- (iii) Must be available for inspection by Members.

## **26 AUTHORITY REQUIRED TO BIND ASSOCIATION**

### **26.1 Executing Documents**

The Association may execute a document under resolution of the Committee without using a common seal if the document is signed by any two authorised cheque signatories as authorised by the Committee, one of whom should be either the Treasurer or President.

### **26.2 Use of the Common Seal**

- (a) If the Association has a common seal on which its corporate name appears in legible characters:
  - (i) The Secretary or any other person as the Committee from time to time decides must provide for its safe custody; and
  - (ii) It must only be used under resolution of the Committee.
- (b) The Association executes a document with its common seal, if the fixing of the seal is witnessed by any two authorised cheque signatories as authorised by the Committee, one of whom should be either the Treasurer or President; and
- (c) Every use of the common seal must be recorded in the Committee's minutes.

## **27 THE ASSOCIATION'S BOOKS AND RECORDS**

### **27.1 Custody of the Books of the Association**

Except as otherwise decided by the Committee from time to time:

- (a) Subject to rule 27.1(b) and (c), the books and any securities of the Association must be kept in the Secretary's custody or under the Secretary's control;
- (b) The Financial Records and, as applicable, the Financial Statements or Financial Reports of the Association must be kept in the Treasurer's custody or under the Treasurer's control;
- (c) The Register of Members is to be kept in the custody or under the control of the Membership Secretary; and
- (d) The Books of the Association must be retained for at least 7 years.

### **27.2 Inspecting of Records and Documents**

- (a) A Member who wants to inspect:
  - (i) The Register of Members under section 54(1) of the Act; or
  - (ii) The record of the names and addresses of Committee Members, and other persons authorised to act on behalf of the Association, under section 58(3) of the Act; or
  - (iii) Any other record or document of the Association.

Must contact the Secretary to make the necessary arrangements for the inspection free of charge at such time and place as is mutually convenient to the Association and the Member;

- (b) Subject to these Rules, and in particular rule 20(e), if the Member wants to inspect a document that records the minutes of a Committee Meeting, the right to inspect that document is subject to any decision the Committee has made about minutes of Committee Meetings generally, or the minutes of a specific Committee Meeting, being available for inspection by Members;
- (c) The Member may make a copy of or take an extract from any record or document of the Association but does not have a right to remove the record or document for that purpose; and

### **27.3 Prohibition on Use of Information in the Books of the Association**

A Member must not use or disclose information in the Books of the Association except for a purpose:

- (a) That is directly connected with the affairs of the Association; or
- (b) Related to the provision of the information to the Commissioner in accordance with a requirement of the Act.

### **27.4 Returning the Books of the Association**

Outgoing Committee Members are responsible for transferring all relevant assets and Books of the Association to the new Committee within 14 days of ceasing to be a Committee Member.

## **28 RESOLVING DISPUTES**

### **28.1 Disputes Arising under the Rules**

- (a) This rule applies to:
  - (i) Disputes between Members; and
  - (ii) Disputes between the Association and one or more Members that arise under the Rules or relate to the Rules of the Association;
- (b) In this rule “Member” includes any former Member whose membership ceased not more than six months before the dispute occurred; and
- (c) The parties to a dispute must attempt to resolve the dispute between themselves within 14 days of the dispute coming to the attention of each party.

### **28.2 Initiating the Grievance Procedure**

- (a) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 28.1(c), any party to the dispute may start the grievance procedure by giving written notice to the Secretary of:
  - (i) The parties to the dispute; and
  - (ii) The matters that are the subject of the dispute.
- (b) Within 28 days after the Secretary is given the notice, a Committee Meeting must be convened to consider and determine the dispute;
- (c) The Secretary must give each party to the dispute written notice of the Committee Meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held;
- (d) The notice given to each party to the dispute must state:
  - (i) When and where the Committee Meeting is to be held; and
  - (ii) That the party, or the party’s representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Committee about the dispute.
- (e) If —
  - (i) The dispute is between one or more Members and the Association; and

- (ii) Any party to the dispute gives written notice to the Secretary stating that the party —
  - A. Does not agree to the dispute being determined by the Committee; and
  - B. Requests the appointment of a mediator under rule 28.4,

The Committee must not determine the dispute.

### **28.3 Determination of the Dispute by the Committee**

- (a) At the Committee Meeting at which a dispute is to be considered and determined, the Committee must —
  - (i) Give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Committee about the dispute; and
  - (ii) Give due consideration to any submissions so made; and
  - (iii) Determine the dispute.
- (b) The Committee must give each party to the dispute written notice of the Committee's determination, and the reasons for the determination, within 7 days after the Committee Meeting at which the determination is made;
- (c) A party to the dispute may, within 14 days after receiving notice of the Committee's determination under rule 28.3(b), give written notice to the Secretary requesting the appointment of a mediator under rule 28.4; and
- (d) If notice is given under rule 28.3(c), each party to the dispute is a party to the mediation.

### **28.4 Appointment of Mediator Mediation**

- (a) This rule applies if written notice has been given to the Secretary requesting the appointment of a mediator:
  - (i) By a Member under rule 7.4; or
  - (ii) By a party to a dispute under rule 28.2(e) or 28.3.
- (b) The mediator must be:
  - (i) A person chosen by agreement between the parties; or
  - (ii) In the absence of agreement:
    - A. If the dispute is between a Member and another Member – a person appointed by the Committee; or
    - B. If the dispute is between a Member or more than one Member and the Association, the Committee or a Committee Member then an independent person who acts as a mediator for another not-for-profit body, such as a community legal centre.
- (c) The person appointed as mediator by the Committee may be a Member or former Member of the Association but must not —
  - (i) Have a personal interest in the matter that is the subject of the mediation; or
  - (ii) Be biased in favour of or against any party to the mediation.

### **28.5 Mediation Process**

- (a) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation;
- (b) Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least 5 days before the mediation takes place;
- (c) The mediator, in conducting the mediation, must:

- (i) Give each party to the mediation process every opportunity to be heard;
  - (ii) Allow each party to the mediation to give due consideration to any written statement given by another party; and
  - (iii) Ensure that natural justice is accorded to the parties to the mediation throughout the mediation process.
- (d) The mediator cannot determine the matter that is the subject of the mediation;
- (e) The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation; and
- (f) The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.

## **28.6 Inability to Resolve Disputes**

If a dispute cannot be resolved under the procedures set out in the Rules, any party to the dispute may apply to the State Administrative Tribunal to determine the dispute in accordance with the Act or otherwise at law.

## **29 CANCELLATION AND DISTRIBUTION OF SURPLUS PROPERTY**

- (a) The Association may cease its activities and have its incorporation cancelled in accordance with the Act if the Members resolve by Special Resolution that the Association will:
- (i) Apply to the Commissioner for cancellation of its incorporation; or
  - (ii) Appoint a liquidator to wind up its affairs.
- (b) The Association must be wound up under rule 29(a)(ii) and Part 9 of the Act before cancellation can take place if it has outstanding debts or any other outstanding legal obligations, or is a party to any current legal proceedings; and
- (c) Upon cancellation of the Association, the Surplus Property must only be distributed to one or more of the following:
- (i) An incorporated association under the Act;
  - (ii) A body corporate that at the time of the distribution is the holder of a licence under the charitable collections legislation in Western Australia;
  - (iii) A company limited by guarantee that is registered as mentioned in section 150 of the Corporations Act 2001 (Cwth);
  - (iv) A company holding a licence that continues in force under section 151 of the Corporations Act 2001(Cwth);
  - (v) A body corporate that at the time of the Surplus Property is distributed, has rules that prevent the property being distributed to its Members;
  - (vi) A trustee for a body corporate referred to in rule 29(c)(v); or
  - (vii) A co-operative registered under the Co-operatives Act 2009 that, at the time of the distribution, is a non-distributing co-operative as defined in that Act.