

# Constitution of Perth Artifactory Inc - DRAFT

January 17, 2023

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## **Revision history**

This version of the constitution, based on the model rules (Schedule 2 of the Regulations), was developed in committee meetings held 2018-08-19 and 2018-08-21, and initially adopted at the AGM held 2018-09-15.

An amendment was adopted to s12.9 at the AGM held 2022-09-17.

This current version is a draft including major amendments, including to the purpose and objects of the Association. Adoption of these amendments will require the passage of a special resolution at a general meeting, as per Rule 73, followed by submission to the Commissioner under Part 3, Division 2 of the Act.

## Preface: Proposed (Draft) amendments to these rules

### Note

This preface is informative only, and is not part of the rules of the Association.

This preface will be deleted before the revised rules are submitted to the Commissioner.

The proposed amendments to the rules of the Association are explained in this section.

Changes to the text are marked like this or .

Additionally, rule 15 regarding *Emergency temporary suspension* has been completely rewritten and is now called *Emergency disciplinary actions*.

Comments, which are not part of the text, appear similar to

## Proofing

The rules have been proofread and checked as follows.

- The wording, the terms used, punctuation, capitalization, and formatting have been conformed to the model rules as closely as possible, except where a variation is genuinely intended.
- Spelling, grammar, etc. corrected.
- Minor ambiguities corrected. E.g. membership class swapping in subrule 8.6.
- The explanatory notes from the Model Rules are included in the document.

## CAP1-Exclude-Voluntary-Invoices

This is an amendment to subrule 58.8 regarding eligibility to vote at general meetings.

This subrule previously required that a member who wanted to vote at a general meeting "must have paid any fee or other money payable to the Association by the member."

At face value, this would mean that having any outstanding invoice would prevent a member from voting, regardless of what the invoice related to, or if the invoice was overdue or not.

The subrule has been amended so that members who want to vote —

- Must have paid their membership fees; and
- Must not have any **overdue** debts; except where those debts relate to invoices for voluntary donations.

## **CAP2-Permissive-Written-Notice-For-Committee**

This is an amendment to rule 33 regarding *Nomination of committee members*.

This rule currently requires nominations for committee members to be sent via written notice to the secretary. Written notice would usually be interpreted as a hard copy document or an email, as per rule 67, and would not include Slack messages.

The amendment changes rule 33 to allow more flexible means of submitting nominations to the secretary, which may include (for example) Slack direct messages.

## **CAP3-Community-Shed**

This is a set of amendments to enable the Association to apply for deductible gift recipient (DGR) status as a "community shed".

Community sheds, including men's sheds and women's sheds, can be informally defined as "workshops where people can meet people, socialise, and share skills and knowledge." The Artifactory already meets this informal definition.

In fact, the Artifactory offers much more to the Perth community than a typical community shed, by —

- Being open to, and truly welcoming, members of all ages, genders, and orientations; and
- Engaging with younger demographics, including university students, not traditionally served by typical community sheds; and
- Offering a breadth of tools, training, and services well beyond the scope of typical community sheds.

As such, it makes sense for the Artifactory to take the steps required to obtain official deductible gift recipient status as a community shed.

DGR status will enable us to better fulfil our objects and purposes, thus delivering more benefits to the Perth community.

### **Requirements for DGR eligibility as a community shed**

A deductible gift recipient (DGR) is an organisation or fund that registers to receive tax deductible gifts or donations.<sup>1</sup>

Community sheds are a new category of DGR, introduced in 2020.

- The eligibility criteria for DGRs generally, and community sheds specifically, are defined in the *Income Tax Assessment Act (Cth) 1997*.
- The Australian Tax Office (ATO) publishes a webpage and a help sheet regarding community sheds.

As per the help sheet, the criteria are:

---

<sup>1</sup>ATO - Gifts and donations

- Have an active ABN - Yes - 16 847 853 023.
- Be a registered charity with ACNC - Yes - ACNC profile.
- Be established and operate in Australia - Yes.
- Meet the **DGR category requirements** for the "community shed" category —
  - A public institution whose **dominant purposes** are advancing mental health and preventing or relieving social isolation.

We are already a public institution, specifically an incorporated association under the *Associations Incorporation Act 2015 (WA)*.

Our activities, including our regularly scheduled general workshop days, electronics workshops, metal-working workshops, and general community organisation, already have the effect of "*advancing mental health and preventing or relieving social isolation*".

We will formally address this criteria by changing our purpose and objects.

- Principally advances these purposes through providing a **physical location** and supports individuals to work on projects or undertake other activities in the company of others.

We already meet this criteria.

- Has **membership** that is open, or is limited only to an individual's gender or indigenous status or both.

Addressed by modification to our membership application process, so that membership will be open to any individual over the age of 18 "*who supports the objects or purposes of the Association*".

- Include **DGR winding up and revocation clauses** in your governing documents.

Addressed by adding to our existing winding-up clause.

## Purposes and objects

Our purposes and objects, at Key Information - Item B., are modified to include:

The dominant purpose of the Association is to advance mental health and prevent or relieve social isolation.

The Association pursues this purpose by encouraging and facilitating creative use of technology at the Association's physical premises, where the Association supports individuals to undertake activities, or work on projects, in the company of others.

The objects of the Association, which fulfil its purpose, are to: ...

The remainder of our objects remain the same, reflecting that we will deliver a unique kind of community shed to the Perth community through our focus on "the creative use of technology", "artistic and technological projects", and so on.

## Open membership

The ATO states that —

A community shed must be open to the community to join and generally not impose criteria restricting membership based on matters such as age, ethnicity or background.

Rejecting an application for arbitrary reasons will not constitute open membership.

...

To meet the open membership requirements, you must have a policy and process in place that clearly demonstrates all new members are nominated and approved without exception. This should be reflected in your governing rules.

To meet this requirement,

- The committee no longer has the power to reject a membership application for arbitrary reasons.
- Instead, the committee may only reject a membership application for the specific reasons listed in subrule 6.4.
- Subrule 6.4.f does allow for the committee to reject applicants who have behaved in a way that is detrimental to the interests of the Association - e.g. against our Code of Conduct.

Given that we are changing from a model where the committee assesses applicants individually, to a model where the committee must accept all applicants automatically, we will also need to consider how we control:

- access to the space outside of scheduled sessions, e.g. issue of 24/7 access keys; and
- access to high-risk tools in the space; and
- inductions to the space generally.

We may need to implement changes to our by-laws and our website in order to effectively manage the risks associated with new members.

These may include requiring a certain level of attendance at regular scheduled events, and completion of prescribed training/inductions, before granting after-hours access.

This would be in line with requirements of other associations (e.g. sports shooting clubs) which are implemented to fulfil our duty of care with regards to health and safety of all participants in the space.

Also included in this section are changes to membership eligibility for under-18's.

- The restriction that all applicants must be a "person at least 18 years of age" has been deleted. This currently makes it impossible for us to admit junior members, e.g. first-year university students.



- The rules have been revised so that persons under the age of 18 can be members, so long as they are in a class of membership that explicitly allows under-18's (e.g. "Student Member") and the class of membership does not confer full voting rights.

#### Note

We should consider using the next general meeting as an opportunity to create a grade of (under 18) student membership.

## Winding-up clause

Rule 72 has been amended to include the language recommended by the ATO in relation to distribution of assets if the Association winds up or loses its DGR status.

## CAP4-Corporate-Members

These amendments restore the provision for body corporates to be members of the Association.

These provisions are part of the Model Rules that were deleted when the model rules were first adapted for the Artifactory.

Restoring these provisions allows the Association to admit e.g. corporate sponsors as a class of membership, broadening our options for raising funds and generating community involvement.

Subrule 6.4.g allows the committee to reject membership applications from body corporates at will.

## CAP5-Meeting-At-More-Than-One-Place

These amendments replace the provisions for meetings to be held electronically "if acceptable to the Secretary and the Chair" with more robust language, taken from the constitution of the West Australian Cricket Association.

For committee meetings, rule 43 and rule 45 were revised.

For general meetings, rule 53 and rule 54 were revised.

## CAP6-Delete-Further-Delay-Clauses

Rule 46 for committee meetings, and rule 56 for general meetings, were revised to delete a clause which allowed for members to wait an additional 60 minutes for members to arrive at a meeting, after the 30 minutes allowed for by the model rules.

The application of the "extra 60 minutes" clause in relation to the following clauses was unclear. Additionally, it was not clear what risk the extra clause addressed, which was not already addressed by the model rules.

## CAP7-Membership-Fees

Rule 12 was clarified regarding:

Setting entrance and membership fees —

- The **amount** of the fees is set by resolution at a general meeting.
- The **schedule** for paying the fees (e.g. yearly, monthly) is set by the committee.

The procedure for re-admitting a member whose membership had lapsed under subrule 12.8.

## CAP8-Common-Seal

This amendment adds a simple statement to Rule 66 stating that the Association does not have a common seal, as recommended by Commerce WA.

## CAP9-Emergency-Disciplinary-Action

Rule 15 for *Emergency temporary suspension* has been changed to *Emergency disciplinary actions (EDAs)* and re-drafted.

This rule gives the committee the power to discipline members with **immediate** effect, where necessary to protect the Association and its members.

This contrasts with the full *Suspension and expulsion* process (rule 16) which takes at least 28 days to implement.

The re-drafted version —

- States that EDAs may be considered where a member "has acted against the interests of the Association" - the same language used in rule 16 regarding *Suspension or expulsion*.
- Still requires two committee members to start an EDA.
- Is more specific about the requirements for the initial notice and the written notice.
- Deletes the section relating to appeals, since this is already covered under the general grievance procedure and the mediation procedure.
- Lists specific kinds of restrictions which are contemplated for EDAs, rather than broadly "temporarily modify member rights".
- Adds a statement that members are not entitled to refunds etc. during the period of an EDA.

## CAP10-Committee-Election

These amendments clarify how committee members are elected, and how the committee members elect the office holders of the Association.

- Rule 28 *Committee members* - delete the term "Executive committee", which is not used anywhere else in the rules or the by-laws.
- Rule 34 *Election of committee members* - clarify that this is about electing committee members, not ordinary committee members specifically.

Also delete the redundant clause stating that proxy votes are permitted - already covered under rule 54 regarding *Proxies*.

- Rule 35 *Election of office holders* - clarify how the election of office holders works:
  - Define that the committee members must meet *as soon as practicable* after the AGM. (Previously the timeframe was not defined.)
  - Define who is the chairperson of the initial committee meeting. (Previously undefined.)
  - Define the ordinary business of the meeting. (Previously undefined.)

## CAP11-Payments-To-Committee-Members

As it stands, rule 41 regarding *Payments to Committee Members* prohibits any payment to committee members for **out-of-pocket expenses for travel and accommodation** in connection with the Association's business.

This is the reverse of the model rules, which states that committee members **are** allowed to be reimbursed for travel expenses.

The likely intent of the current rule is that committee members of the Artifactory, who usually live in the Perth metropolitan area, should not be allowed to claim expenses for travelling within Perth.

However the complete prohibition against paying for expenses that are "otherwise in connection with the Association's business" also restricts committee members from being reimbursed for travel that is genuinely helpful to the Artifactory. For example, we might want to —

- Send a committee member to promote the Artifactory's interests at a conference in Brisbane.
- Send a committee member to inspect a large, expensive machine in Sydney (e.g. a laser cutter), and organise the purchase and shipment of that machine back to Perth.
- Send a committee member to a client's site to deliver services as part of a commercial agreement between the Artifactory and a third party, where the expenses will be paid out of the Artifactory's fee for those services.

The proposed amendment to the rules allows for committee members to be reimbursed for out-of-pocket travel and accommodation expenses so long as —

- The expenses do not relate to attendance at committee meetings or general meetings; and
- The expenses are approved in principle by the committee before the expenses are incurred.

## CAP12-Multiple-Bank-Accounts

Rule 63 regarding *Control of funds* refers to the Association having a single bank account.

The Association needs to have multiple bank accounts, to allow for separation of funds from different sources and for different purposes.

The language of rule 63 is amended to allow for the Association to have multiple bank accounts.

## What next?

These proposed amendments to the rules are open for comment until Friday 2023-02-03.

- Informal discussion may be conducted on Slack, in the channel #governance.
- Formal submissions of comments, to be considered by the committee, **must be sent to the secretary** - secretary@artifactory.org.au - by **5pm AWST on Friday 2023-02-03**.

Once the proposed amendments are finalised, the secretary will convene a *special general meeting* to vote on the amendments.

We currently expect to hold the special general meeting on Saturday 2023-03-04.

Formal notice of this meeting will be sent to all members of the Association in due course.

### Note

Changes to the rules of the Association must pass as *special resolutions* at a general meeting.

\* Special resolutions have specific notice requirements and cannot be amended at the meeting.

\* Special resolutions must pass "*by the votes of not less than three-fourths of the members of the Association who cast a vote at the meeting*".

Because of specific notice requirements mandated by the Act, it is **impossible** to alter a special resolution, or alter the proposed amendments to the rules, during a meeting.

Therefore, it will **not** be possible or appropriate to perform any review of the amendments in the general meeting.

Members who want their comments to be considered **must** submit those comments by **5pm AWST on Friday 2023-02-03**.

## Key information

**A. The name of the incorporated association:**

Perth Artifactory Inc.

**B. The objects or purposes of the incorporated association:**

The dominant purpose of the Association is to advance mental health and prevent or relieve social isolation.

The Association pursues this purpose by encouraging and facilitating creative use of technology at the Association's physical premises, where the Association supports individuals to undertake activities, or work on projects, in the company of others.

The objects of the Association, which fulfil its purpose, are to:

- promote the creative use of technology;
- establish, maintain, and equip a shared work space for its members;
- provide work space, storage, and other resources for the creative and artistic use of technology;
- foster a collaborative, inclusive, safe, and creative environment for artistic and technological projects;
- educate and train its members in skills relevant to its objects;
- organise educational, social and cultural events to promote the creative use of technology;
- raise funds to support its other objects;
- communicate and collaborate with others with similar objectives.

**C. Quorum for general meetings:**

Any 20% of the ordinary members (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.

**D. Quorum for committee meetings:**

Any 4 committee members constitute a quorum for the conduct of the business of a committee meeting.

**E. Financial year:**

The Association's financial year will be the period of 12 months commencing on 1st July and ending on 30th June of each year.

## Part 1 - PRELIMINARY

### 1 Terms used

In these rules, unless the contrary intention appears —

- **Act** means the *Associations Incorporation Act 2015*;
- **associate member** means a member with the rights referred to in rule 8.4;
- **Association** means the incorporated association to which these rules apply;
- **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** means by-laws made by the Association under rule 65;
- **chairperson** means the committee member holding office as the chairperson of the Association;
- **Commissioner** means the person for the time being 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;
- **committee member** means a member of the committee;
- **direct message** means a message sent directly to a person using the primary online communication platform administered by the Association.
- **EDA** means an emergency disciplinary action under rule 15.
- 
- **financial records** includes —
  - a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
  - b) documents of prime entry; and
  - c) working papers and other documents needed to explain —
    - 1.0.a. the methods by which financial statements are prepared; and
    - 1.0.b. adjustments to be made in preparing financial statements;

- **financial report**, of a tier 2 association or a tier 3 association, has the meaning given in section 63 of the Act;
- **financial statements** means the financial statements in relation to the Association required under Part 5 Division 3 of the Act;
- **financial year**, of the Association, has the meaning given in Key Information, item E.;
- **general meeting**, of the Association, means a meeting of the Association that all members are entitled to receive notice of and to attend;
- **member** means a person (including a body corporate) who is an ordinary member or an associate member of the Association;
- **office holder** means the committee members listed in subrule 28.2.
- **ordinary committee member** means a committee member who is not an office holder of the Association under subrule 28.2;
- **ordinary member** means a member with the rights referred to in rule 8.3;
- **register of members** means the register of members referred to in section 53 of the Act;
- **rules** means these rules of the Association, as in force for the time being;
- **secretary** means the committee member holding office as the secretary of the Association;
- **special general meeting (SGM)** means a general meeting of the Association other than the annual general meeting;
- **special resolution** means a resolution passed by the members at a general meeting in accordance with section 51 of the Act;
- **subcommittee** means a subcommittee appointed by the committee under rule 49.1.a;
- **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 committee member holding office as the treasurer of the Association.

**2 (deleted)**

**3 (deleted)**

## Part 2 - ASSOCIATION TO BE NOT FOR PROFIT BODY

### 4 Not for Profit Body

- 4.1. The property and income of the Association must be applied solely towards the promotion of 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 the promotion of those objects or purposes.
- 4.2. A payment may be made to a member out of the funds of the Association only if it is authorised under subrule 4.3.
- 4.3. A payment to a member out of the funds of the Association is authorised if it is —
  - 4.3.a. the payment in good faith to the member as reasonable remuneration for any services provided to the Association, or for goods supplied to the Association, in the ordinary course of business; or
  - 4.3.b. the payment of interest, on money borrowed by the Association from the member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or
  - 4.3.c. the payment of reasonable rent to the member for premises leased by the member to the Association; or
  - 4.3.d. the reimbursement of reasonable expenses properly incurred by the member on behalf of the Association.

#### Note

Note for this rule:

Section 5(1) of the Act provides that an association is not eligible to be incorporated under the Act if it is formed or carried on for the purpose of securing pecuniary profit for its members from its transactions, and section 5(3) of the Act provides details about when an association is not ineligible under section 5(1) of the Act.



## **Part 3 - MEMBERS**

### **Division 1 - Membership**

#### **5 Applying for Membership**

- 5.1. Any person who supports the objects or purposes of the Association is eligible to apply to become a member.
- 5.2. A person who wishes to become a member of the Association must submit an application to the Association.
- 5.3. The applicant must specify in the application the class of membership, if there is more than one, to which the application relates.
- 5.4. The applicant must meet the eligibility criteria, defined in the by-laws, for the class of membership they are applying for.
- 5.5. An individual who has not reached the age of 18 years is not eligible to apply for a class of membership that confers full voting rights.
- 5.6. An individual who has not reached the age of 18 years may only apply for a class of membership which specifically accepts individuals under the age of 18 years.

#### **6 Dealing with Membership Applications**

- 6.1. The committee must consider each application for membership of the Association and decide whether to accept or reject the application.
- 6.2. The committee may delay its consideration of an application if the committee considers that any matter relating to the application needs to be clarified by the applicant or that the applicant needs to provide further information in support of the application.
- 6.3. The committee must not accept an application unless the applicant —
  - 6.3.a. is eligible under rule 5.1; and
  - 6.3.b. has applied under rule 5.2; and
  - 6.3.c. is eligible for the class of membership they have applied for under subrules 5.4, 5.5, and 5.6.
- 6.4. The committee may only reject applications for the following reasons —
  - 6.4.a. the committee cannot accept the application because of subrule 6.3; or
  - 6.4.b. the committee determines that the Association's overall membership capacity has been reached; or
  - 6.4.c. the committee determines that the Association's membership capacity for a particular class of membership has been reached; or
  - 6.4.d. the applicant has previously been expelled from the Association under rule 16; or

- 6.4.e. the applicant has previously ceased to be a member under subrule 12.8; or
  - 6.4.f. the applicant has acted detrimentally to the interests of the Association; or
  - 6.4.g. if the applicant is a body corporate - for any reason.
- 6.5. The committee must notify the applicant of the committee's decision to accept or reject an application as soon as practicable after making the decision.
- 6.6. If the committee rejects the application, the committee is not required to give the applicant its reasons for doing so.

## **7 Becoming a member**

An applicant for membership of the Association becomes a member when —

- a) the committee accepts the application; and
- b) the applicant pays any membership fees payable to the Association under rule 12.
- c)

## **8 Classes of membership**

- 8.1. The Committee may make multiple classes of ordinary membership and associate membership and may make individual arrangements for membership.
- 8.2. A person can only hold one class of membership.
- 8.3. An ordinary 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.
- 8.4. An associate member has the rights referred to in subrule 8.3 —
- 8.4.a. other than full voting rights;
  - 8.4.b. and rights restricted under a particular class of associate membership.
- 8.5. The Committee may limit the number of members of any class of membership and associate membership.
- 8.6. If a particular class of membership is in use, the Association does not have the right except at a general meeting to change a class of ordinary membership to an class of associate membership or vice versa.

## **9 When Membership Ceases**

- 9.1. A person ceases to be a member when any of the following takes place —
- 9.1.a. for a member who is an individual, the individual dies;
  - 9.1.b. for a member that is a body corporate, the body corporate is wound up;
  - 9.1.c. the person resigns from the Association under rule 10;
  - 9.1.d. the person is expelled from the Association under rule 16;

9.1.e. the person ceases to be a member under rule 12.8.

9.2. The Association must keep a record, for at least one year after a person ceases to be a member, of —

9.2.a. the date on which the person ceased to be a member; and

9.2.b. the reason why the person ceased to be a member.

## 10 Resignation

10.1. A member may resign from membership of the Association by giving written notice of the resignation to the Secretary or other methods described in the by-laws.

10.2. The resignation takes effect —

10.2.a. when the Secretary receives the notice; or

10.2.b. if a later time is stated in the notice, at that later time; or

10.2.c. when described in the by-laws.

10.3. A person who has resigned from membership of the Association remains liable for any fees that are owed to the Association (the **owed amount**) at the time of resignation.

10.4. The owed amount may be recovered by the Association in a court of competent jurisdiction as a debt due to the Association.

## 11 Rights not Transferable

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

## Division 2 - Membership fees

### 12 Membership fees

12.1. The entrance fee (if any) and the membership fee (if any) for membership of the Association must be —

12.1.a. determined by the committee; and

12.1.b. approved at a general meeting.

12.2. The committee must determine the acceptable schedules for payment of membership fees.

#### Note

e.g. monthly, yearly, lifetime.

12.3. The fees determined under subrules 12.1 and 12.2 may be different for different classes of membership.

12.4.

12.5.

12.6.

12.7. A member must pay the membership fee to the treasurer, or another person authorised by the committee to accept payments, by the date (the **due date**) determined by the committee.

12.8. If a member has not paid the membership fee within the period of 3 months after the due date, the member ceases to be a member on the expiry of that period.

12.9. If a person who has ceased to be a member under subrule 12.8 offers to pay the membership fee for the relevant class of membership after the period referred to in that subrule has expired —

12.9.a. the committee may, at its discretion, accept that payment; and

12.9.b. if the payment is accepted, the person's membership is reinstated from the date the payment is accepted.

## **Division 3 - Register of members**

### **13 Register of members**

13.1. The secretary, or another person authorised by the committee, is responsible for the requirements imposed on the Association under section 53 of the Act to maintain the register of members and record in that register any change in the membership of the Association.

13.2. In addition to the matters referred to in section 53(2) of the Act, the register of members must include the class of membership (if applicable) to which each member belongs and the date on which each member becomes a member.

13.3. The register of members must be kept at a place determined by the committee.

13.4. A member who wishes to inspect the register of members must contact the secretary to make the necessary arrangements.

13.5. If —

13.5.a. a member inspecting the register of members wishes to make a copy of, or take an extract from, the register under section 54(2) of the Act; or

13.5.b. a member makes a written request under section 56(1) of the Act to be provided with a copy of the register of members,

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

## Part 4 - DISCIPLINARY ACTION, DISPUTES AND MEDIATION

### Division 1 - Term used

#### 14 Term Used: Member

In this Part —

**member**, in relation to a member who is expelled from the Association, includes former member.

### Division 2 - Disciplinary action

#### 15 Emergency disciplinary actions

##### Note

CAP9-Emergency-Disciplinary-Action

The section "Emergency disciplinary actions" fully replaces the old section regarding "Emergency temporary suspensions".

- 15.1. The committee may decide to impose an emergency disciplinary action (**EDA**) on a member, if —
- 15.1.a. The member acts detrimentally to the interests of the Association; and
  - 15.1.b. The committee decides that the member poses an immediate and continuing risk to the interests of the Association, such that a suspension or expulsion under rule 16 cannot be implemented quickly enough to mitigate the risk.
- 15.2. An EDA must be initiated by a committee member and seconded by another committee member.
- 15.3. An EDA against a member takes effect as soon as a committee member gives notice to the member (the **initial notice**), either —
- 15.3.a. verbally; or
  - 15.3.b. by written notice; or
  - 15.3.c. by direct message.
- 15.4. A committee member must deliver a written notice within 72 hours of the initial notice to —
- 15.4.a. The member; and
  - 15.4.b. All committee members.

- 15.5. The notice given under subrule 15.4 must state —
- 15.5.a. That the committee has imposed an emergency disciplinary action on the member under rule 15; and
  - 15.5.b. The reasons for the EDA; and
  - 15.5.c. The effects of the EDA; and
  - 15.5.d. The date of the initial notice given under subrule 15.3; and
  - 15.5.e. The date when the EDA expires; and
  - 15.5.f. That the member is entitled to initiate the grievance procedure under Part 4 Division 3; and
  - 15.5.g. A link to, or copy of, these rules as a whole.
- 15.6. The duration of an EDA must not exceed 31 days after the initial notice.
- 15.7. The effects of an emergency disciplinary actions may include any combination of —
- 15.7.a. A restriction or prohibition against using or entering the Association’s premises; or
  - 15.7.b. A restriction or prohibition against using the Association’s equipment, resources, facilities, or services; or
  - 15.7.c. A restriction or prohibition against attending or participating in events organised by the Association, whether on the Association’s premises or not; or
  - 15.7.d. Any other restriction or prohibition which the committee decides is reasonable and appropriate to mitigate a risk to the interests of the Association.
- 15.8. An emergency disciplinary action cannot, by itself, have the effect of —
- 15.8.a. Prohibiting a member from initiating the grievance procedure (Div 3) or requesting the appointment of a mediator (Div 4).
  - 15.8.b. Prohibiting an ordinary member from attending or voting at a general meeting.
  - 15.8.c. Prohibiting a committee member from attending a committee meeting or voting as a committee member.
- 15.9. Each EDA must be reviewed at the next committee meeting after the EDA is raised. The committee must decide whether to endorse, modify, or withdraw the EDA.
- 15.10. During the period a member is subject to an emergency disciplinary action, the member is not entitled to a refund, rebate, relief, or credit for membership fees paid, or payable, to the Association.

## Emergency Temporary Suspension

### Note

CAP9-Emergency-Disciplinary-Action

This section “Emergency temporary suspension” is deleted.

- 15.1. In the event that the actions of a member pose an imminent risk to the Objects of the Association as defined by this Constitution any two members of the Management Committee may temporarily modify member rights.
- 15.2. An emergency temporary suspension cannot be used to
  - 15.2.a. modify the rights of a member in a way that prevents them from exercising their voting rights as defined by this Constitution.
  - 15.2.b. modify the rights of a member of the Management Committee in a way that prevents them from exercising their ability to vote as a member of the Management Committee.
- 15.3. **Notice of Emergency Temporary Suspension** An initial notice must be provided verbally or in writing by an instigating Management Committee member. A written notice must be delivered to the suspended member and all members of the committee within 3 days and include -
  - 15.3.a. The rights being restricted
  - 15.3.b. The reason for the Emergency Temporary Suspension
  - 15.3.c. A summary of this section of the Constitution
  - 15.3.d. Any applicable rights or methods of appeal available to the member
  - 15.3.e. A link to, or a copy of, this Constitution as a whole
- 15.4. **Length of Emergency Temporary Suspension** An Emergency Temporary Suspension under this section must not exceed 31 days from the date of initial notification.
- 15.5. Upholding and withdrawing an emergency temporary suspension
  - 15.5.a. An emergency temporary suspension must be reviewed and can be modified, withdrawn or upheld at every subsequent meeting of the management committee where allowable under this constitution.
  - 15.5.b. Any two members of the Management Committee may choose to withdraw or modified an emergency temporary suspension unless that emergency temporary suspension has been upheld by a meeting of the Management Committee. Any changes can be delivered verbally but must also be sent via written notice within 3 days.
- 15.6. Appealing an Emergency Temporary Suspension
  - 15.6.a. A member subject to a emergency temporary suspension defined by this section may opt to provide a written appeal of reasonable length to the Secretary. The Management Committee must consider this appeal when considering the suspension.

## **16 Suspension or expulsion**

- 16.1. The committee may decide to suspend a member's membership or to expel a member from the Association if —
  - 16.1.a. the member contravenes any of these rules; or
  - 16.1.b. the member acts detrimentally to the interests of the Association.
- 16.2. The secretary must give the member written notice of the proposed suspension or expulsion at least 28 days before the committee meeting at which the proposal is to be considered by the committee.
- 16.3. The notice given to the member must state —
  - 16.3.a. when and where the committee meeting is to be held; and
  - 16.3.b. the grounds on which the proposed suspension or expulsion is based; and
  - 16.3.c. that the member, or the member's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the committee about the proposed suspension or expulsion;
- 16.4. At the committee meeting, the committee must —
  - 16.4.a. give the member, or the member's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the committee about the proposed suspension or expulsion; and
  - 16.4.b. give due consideration to any submissions so made; and
  - 16.4.c. decide —
    - 16.4.c.i. whether or not to suspend the member's membership and, if the decision is to suspend the membership, the period of suspension; or
    - 16.4.c.ii. whether or not to expel the member from the Association.
- 16.5. A decision of the committee to suspend the member's membership or to expel the member from the Association takes immediate effect.
- 16.6. The committee must give the member written notice of the committee's decision, and the reasons for the decision, within 7 days after the committee meeting at which the decision is made.
- 16.7. A member whose membership is suspended or who is expelled from the Association may, within 14 days after receiving notice of the Committee's decision under subrule 16.6, give written notice to the secretary requesting the appointment of a mediator under rule 24.
- 16.8. If notice is given under subrule 16.7, the member who gives the notice and the committee are the parties to the mediation.

## **17 Consequences of suspension**

- 17.1. During the period a member's membership is suspended, the member —



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

## **Division 3 - Resolving disputes**

### **18 Terms Used**

In this Division —

**grievance procedure** means the procedures set out in this Division;

**party to a dispute** includes a person —

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

### **19 Application of Division**

The grievance procedure applies to disputes —

- a) between members; or
- b) between one or more members and the Association.

### **20 Parties to attempt to resolve dispute**

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

### **21 How grievance procedure is started**

- 21.1. If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 20, any party to the dispute may start the grievance procedure by giving written notice to the secretary of —
  - 21.1.a. the parties to the dispute; and
  - 21.1.b. the matters that are the subject of the dispute.

- 21.2. Within 28 days after the secretary is given the notice, a committee meeting must be convened to consider and determine the dispute.
- 21.3. 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.
- 21.4. The notice given to each party to the dispute must state —
  - 21.4.a. when and where the committee meeting is to be held; and
  - 21.4.b. 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.
- 21.5. If —
  - 21.5.a. the dispute is between one or more members and the Association; and
  - 21.5.b. any party to the dispute gives written notice to the secretary stating that the party —
    - 21.5.b.i. does not agree to the dispute being determined by the committee; and
    - 21.5.b.ii. requests the appointment of a mediator under rule 24,the committee must not determine the dispute.

## **22 Determination of dispute by committee**

- 22.1. At the committee meeting at which a dispute is to be considered and determined, the committee must —
  - 22.1.a. 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
  - 22.1.b. give due consideration to any submissions so made; and
  - 22.1.c. determine the dispute.
- 22.2. 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.
- 22.3. A party to the dispute may, within 14 days after receiving notice of the committee's determination under subrule 22.1.c, give written notice to the secretary requesting the appointment of a mediator under rule 24.
- 22.4. If notice is given under subrule 22.3, each party to the dispute is a party to the mediation.

## **Division 4 - Mediation**

### **23 Application of division**

- 23.1. This Division applies if written notice has been given to the secretary requesting the appointment of a mediator —
- 23.1.a. by a member under rule 16.7; or
  - 23.1.b. by a party to a dispute under rule 21.5.b.ii or 22.3.
- 23.2. If this Division applies, a mediator must be chosen or appointed under rule 24.

### **24 Appointment of mediator**

- 24.1. 24.1.a.
- 24.1.b.
- 24.2. The mediator must be a person chosen —
- 24.2.a. if the appointment of a mediator was requested by a member under rule 16.7 — by agreement between the Member and the committee; or
  - 24.2.b. if the appointment of a mediator was requested by a party to a dispute under rule 21.5.b.ii or 22.3 — by agreement between the parties to the dispute.
- 24.3. If there is no agreement for the purposes of subrule 24.2.a or 24.2.b, then, subject to subrules 24.4 and 24.5 the committee must appoint the mediator.
- 24.4. The person appointed as mediator by the committee must be a person who acts as a mediator for another not-for-profit body, such as a community legal centre, if the appointment of a mediator was requested by —
- 24.4.a. a member under rule 16.7; or
  - 24.4.b. a party to a dispute under rule 21.5.b.ii; or
  - 24.4.c. a party to a dispute under rule 22.3 and the dispute is between one or more members and the Association.
- 24.5. The person appointed as mediator by the committee may be a member or former member of the Association but must not —
- 24.5.a. have a personal interest in the matter that is the subject of the mediation; or
  - 24.5.b. be biased in favour of or against any party to the mediation.

### **25 Mediation process**

- 25.1. The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- 25.2. 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.

25.3. In conducting the mediation, the mediator must —

- 25.3.a. give each party to the mediation every opportunity to be heard; and
- 25.3.b. allow each party to the mediation to give due consideration to any written statement given by another party; and
- 25.3.c. ensure that natural justice is given to the parties to the mediation throughout the mediation process.

25.4. The mediator cannot determine the matter that is the subject of the mediation.

25.5. 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.

25.6. The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.

#### Note

Note for this rule:

Section 182(1) of the Act provides that an application may be made to the State Administrative Tribunal to have a dispute determined if the dispute has not been resolved under the procedure provided for in the incorporated association's rules.

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

If —

- a) mediation takes place because a member whose membership is suspended or who is expelled from the Association gives notice under rule 16.7; and
- b) as the result of the mediation, the decision to suspend the member's membership or expel the member is revoked,

that revocation does not affect the validity of any decision made at a committee meeting or general meeting during the period of suspension or expulsion.

## **Part 5 - COMMITTEE**

### **Division 1 - Powers of Committee**

#### **27 Committee**

- 27.1. The committee members are the persons who, as the management committee of the Association, have the power to manage the affairs of the Association.
- 27.2. Subject to the Act, these rules, the by-laws (if any) and any resolution passed at a general meeting, the committee has power to do all things necessary or convenient to be done for the proper management of the affairs of the Association.
- 27.3. The committee must take all reasonable steps to ensure that the Association complies with the Act, these rules and the by-laws (if any).

### **Division 2 - Composition of committee and duties of members**

#### **28 Committee members**

- 28.1. The committee must consist of at least 5 but not more than 10 committee members.
- 28.2. The following are the office holders of the Association —
  - 28.2.a. the chairperson;
  - 28.2.b. the deputy chairperson;
  - 28.2.c. the secretary;
  - 28.2.d. the treasurer.
- 28.3. A person may be a committee member if the person is —
  - 28.3.a. an individual who has reached 18 years of age; and
  - 28.3.b. a ordinary member.
- 28.4. A person must not hold 2 or more of the offices mentioned in subrule 28.2 at the same time.
- 28.5.

#### **29 Chairperson**

- 29.1. It is the duty of the chairperson to consult with the secretary regarding the business to be conducted at each committee meeting and general meeting.
- 29.2. The chairperson has the powers and duties relating to convening and presiding at committee meetings and presiding at general meetings provided for in these rules.

### **30 Secretary**

The Secretary has the following duties —

- 30.1. dealing with the Association's correspondence;
- 30.2. consulting with the chairperson regarding the business to be conducted at each committee meeting and general meeting;
- 30.3. preparing the notices required for meetings and for the business to be conducted at meetings;
- 30.4. unless another member is authorised by the committee to do so, maintaining on behalf of the Association the register of members, and recording in the register any changes in the membership, as required under section 53(1) of the Act;
- 30.5. maintaining on behalf of the Association an up-to-date copy of these rules, as required under section 35(1) of the Act;
- 30.6. 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;
- 30.7. ensuring the safe custody of the books of the Association, other than the financial records, financial statements and financial reports, as applicable to the Association;
- 30.8. maintaining full and accurate minutes of committee meetings and general meetings;
- 30.9. carrying out any other duty given to the secretary under these rules or by the committee.

### **31 Treasurer**

The treasurer has the following duties —

- 31.1. ensuring that any amounts payable to the Association are collected and issuing receipts for those amounts in the Association's name;
- 31.2. ensuring that any amounts paid to the Association are credited to the appropriate account of the Association, as directed by the committee;
- 31.3. ensuring 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;
- 31.4. ensuring that the Association complies with the relevant requirements of Part 5 of the Act;
- 31.5. ensuring the safe custody of the Association's financial records, financial statements and financial reports, as applicable to the Association;
- 31.6. if the Association is a tier 1 association, coordinating the preparation of the Association's financial statements before their submission to the Association's annual general meeting;
- 31.7. 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 annual general meeting;

- 31.8. h providing 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;
- 31.9. carrying out any other duty given to the treasurer under these rules or by the committee.

## **Division 3 - Election of committee members and tenure of office**

### **32 How members become Committee members**

A member becomes a committee member if the member —

- 32.1. is elected to the committee at a general meeting; or
- 32.2. is appointed to the committee by the committee to fill a casual vacancy under rule 39.

### **33 Nomination of committee members**

- 33.1. At least 21 days before an annual general meeting, the secretary must send written notice to all the members —
  - 33.1.a. calling for nominations for election to the committee; and
  - 33.1.b. stating the date by which nominations must be received by the secretary to comply with subrule 33.2 and 33.3.
- 33.2. A member who wishes to be considered for election to the committee at the annual general meeting must nominate for election by notifying the secretary at least 7 days before the annual general meeting.
- 33.3. Each nomination must be supported by a second member. The second member must notify the secretary of their support for the nomination at least 7 days before the annual general meeting.
- 33.4. Notices to the secretary for the purposes of rules 33.2 and 33.3 must be either —
  - 33.4.a. A written notice; or
  - 33.4.b. A direct message.
- 33.5. (deleted.)
- 33.6. A member whose nomination does not comply with this rule is not eligible for election to the committee unless the member is nominated under rule 34.2.b.

### **34 Election of committee members**

- 34.1. At the annual general meeting, the Association must decide by resolution the number of committee members to hold office for the next year.

**Note**

Refer to subrule 28.1 regarding the number of committee members.

- 34.2. If the number of members nominating for committee membership is not greater than the number to be elected, the chairperson of the meeting —
- 34.2.a. must declare each of those members to be elected as committee members; and
  - 34.2.b. may call for further nominations from the ordinary members at the meeting to fill any positions remaining unfilled after the elections under rule 34.2.a.
- 34.3. If —
- 34.3.a. the number of members nominating for committee membership is greater than the number to be elected; or
  - 34.3.b. the number of members nominating under rule 34.2.b is greater than the number of positions remaining unfilled,  
the members at the meeting must vote by secret ballot to decide the members who are to be elected as committee members.
- 34.4. A member who has nominated for committee membership may vote in accordance with that nomination.
- 34.5.

## **35 Election of office holders**

- 35.1. Subject to subrule 42.2, the newly elected committee members must hold the **first committee meeting** as soon as practicable after the annual general meeting.
- 35.2. The chairperson of the first committee meeting must be —
- 35.2.a. The first committee member to volunteer; or
  - 35.2.b. If no committee member volunteers - determined at random.
- 35.3. The ordinary business of the first committee meeting is as follows —
- 35.3.a. To elect the chairperson of the Association; then
  - 35.3.b. To elect the other office holders of the Association; then
  - 35.3.c. Any other business which the by-laws require to be addressed at the first committee meeting.
- 35.4. A separate election must be held for each position of office holder of the Association, as follows —
- 35.4.a. The chairperson of the meeting must call for nominations from the committee members at the meeting.
  - 35.4.b. If there is no nomination for a position, the chairperson of the meeting must appoint a committee member to the position.



- 35.4.c. If only one committee member has nominated for a position, the chairperson of the meeting must declare the committee member elected to the position.
- 35.4.d. If more than one committee member has nominated for a position, the committee members at the meeting must vote by secret ballot decide who is to be elected to the position.
- 35.4.e. Each committee member present at the meeting may vote for one committee member who has nominated for the position.
- 35.4.f. A committee member who has nominated for the position may vote for themselves.
- 35.4.g. On the committee member's election, the new chairperson of the Association may take over as the chairperson of the meeting.

35.5.

35.6.

35.7.

35.8.

35.9.

35.10.

35.11.

35.12.

## **36 Term of office**

- 36.1. The term of office of a committee member begins when the member —
  - 36.1.a. is elected at an annual general meeting or under rule 37.3.b; or
  - 36.1.b. is appointed to fill a casual vacancy under rule 39.
- 36.2. Subject to rule 38, a committee member holds office until the positions on the committee are declared vacant at the next annual general meeting.
- 36.3. A committee member may be re-elected.

## **37 Resignation and removal from office**

- 37.1. A committee member may resign from the committee by written notice given to the secretary or, if the resigning member is the secretary, given to the chairperson.
- 37.2. The resignation takes effect —
  - 37.2.a. when the notice is received by the secretary or chairperson; or
  - 37.2.b. if a later time is stated in the notice, at the later time.
- 37.3. At a general meeting, the Association may by resolution —
  - 37.3.a. remove a committee member from office; and

- 37.3.b. elect a member who is eligible under rule 28.3 to fill the vacant position.
- 37.4. A committee member who is the subject of a proposed resolution under subrule 37.3.a may make written representations (of a reasonable length) to the secretary or chairperson and may ask that the representations be provided to the members.
- 37.5. The secretary or chairperson may give a copy of the representations to each member or, if they are not so given, the committee member may require them to be read out at the general meeting at which the resolution is to be considered.

## **38 When membership of committee ceases**

- 38.1. A person ceases to be a committee member if the person —
- 38.1.a. dies or otherwise ceases to be a member; or
  - 38.1.b. resigns from the committee or is removed from office under rule 37; or
  - 38.1.c. becomes ineligible to accept an appointment or act as a committee member under section 39 of the Act;
  - 38.1.d. becomes permanently unable to act as a committee member because of a mental or physical disability; or
  - 38.1.e. fails to attend 3 consecutive Committee meetings, of which the person has been given notice, without having notified the committee at least 24 hours beforehand that the person will be unable to attend.

### **Note**

Note for this rule:

Section 41 of the Act imposes requirements, arising when a person ceases to be a member of the management committee of an incorporated association, that relate to returning documents and records.

## **39 Filling casual vacancies**

- 39.1. The committee may appoint a member who is eligible under rule 28.3 to fill a position on the committee that —
- 39.1.a. has become vacant under rule 38; or
  - 39.1.b. was not filled by election at the most recent annual general meeting or under rule 37.3.b.
- 39.2. If the position of secretary becomes vacant, the committee must appoint a member who is eligible under rule 28.3 to fill the position within 14 days after the vacancy arises.
- 39.3. Subject to the requirement for a quorum under rule 46, the committee may continue to act despite any vacancy in its membership.
- 39.4. If there are fewer committee members than required for a quorum under rule 46, the committee may act only for the purpose of —
- 39.4.a. appointing committee members under this rule; or

39.4.b. convening a general meeting.

## 40 Validity of acts

The acts of a committee or subcommittee, or of a committee member or member of a subcommittee, are valid despite any defect that may afterwards be discovered in the election, appointment or qualification of a committee member or member of a subcommittee.

## 41 Payments to Committee Members

41.1. In this rule —

**committee member** includes a member of a subcommittee;

**committee meeting** includes a meeting of a subcommittee.

41.2. A committee member is entitled to be paid out of the funds of the Association for any out-of-pocket expenses for travel and accommodation incurred in connection with the Association's business, provided that —

41.2.a. the expenses do **not** relate to attending a committee meeting; and

41.2.b. the expenses do **not** relate to attending a general meeting; and

41.2.c.

41.2.d. The reason for the travel, and an estimate of the expenses, is approved by the committee before the expenses are incurred.

### Note

Note for this rule:

All committee members are also members of the Association. Therefore, committee members can also be paid out of the funds of the Association under subrule 4.3 regarding payments to members of the Association.

## Division 4 - Committee meetings

### 42 Committee meetings

42.1. The committee will meet at least once every two months.

42.2. The date, time and place of the first committee meeting must be determined by the committee members as soon as practicable after the annual general meeting at which the committee members are elected.

### Note

Refer to rule 35 for the business that must be considered at the first committee meeting.

42.3. Special committee meetings may be convened by the chairperson or any 3 committee members.

### **43 Notice of committee meetings**

- 43.1. Notice of each committee meeting must be given to each committee member at least 48 hours before the time of the meeting.
- 43.2. The notice must state the date, time and place of the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this), and must describe the general nature of the business to be conducted at the meeting.
- 43.3. Unless subrule 43.4 applies, the only business that may be conducted at the meeting is the business described in the notice.
- 43.4. Urgent business that has not been described in the notice may be conducted at the meeting if the committee members at the meeting unanimously agree to treat that business as urgent.

### **44 Procedure and order of business**

- 44.1. The chairperson or, in the chairperson's absence, the deputy-chairperson must preside as chairperson of each committee meeting.
- 44.2. If the chairperson and deputy chairperson are absent or are unwilling to act as chairperson of a meeting, the committee members at the meeting must choose one of them to act as chairperson of the meeting.
- 44.3. The procedure to be followed at a committee meeting must be determined from time to time by the committee.
- 44.4. The order of business at a committee meeting may be determined by the committee members at the meeting.
- 44.5. A member or other person who is not a committee member may attend a committee meeting if invited to do so by the committee.
- 44.6. A person invited under subrule 44.5 to attend a committee meeting —
  - 44.6.a. has no right to any agenda, minutes or other document circulated at the meeting; and
  - 44.6.b. must not comment about any matter discussed at the meeting unless invited by the committee to do so; and
  - 44.6.c. cannot vote on any matter that is to be decided at the meeting.

### **45 Use of technology to be present at committee meetings**

- 45.1.
- 45.2.

#### **Note**

Taken from the constitution of the West Australian Cricket Association.

If a committee meeting is held in two or more places linked together by any technology —

- 45.1. a member present at one of the places is taken to be present at the meeting unless and until that member states to the chair of the meeting that they are discontinuing participation in the meeting; and
- 45.2. the chair of that meeting may determine at which place the meeting will be taken to have been held.

## **46 Quorum for committee meetings**

- 46.1.
- 46.2. Subject to subrule 39.4 no business is to be conducted at a committee meeting unless a quorum is present.
- 46.3. If a quorum is not present within 30 minutes after the notified commencement time of a committee meeting —
  - 46.3.a.
  - 46.3.b. in the case of a special meeting — the meeting lapses; or
  - 46.3.c. otherwise, the meeting is adjourned to the same time, day and place in the following week.
- 46.4. If —
  - 46.4.a. a quorum is not present within 30 minutes after the commencement time of a committee meeting held under subrule 46.3.c; and
  - 46.4.b. at least 2 committee members are present at the meeting,  
those members present are taken to constitute a quorum.

## **47 Voting at committee meetings**

- 47.1. Each committee member present at a committee meeting has one vote on any question arising at the meeting.
- 47.2. A motion is carried if a majority of the committee members present at the committee meeting vote in favour of the motion.
- 47.3. If the votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.
- 47.4. A vote may take place by the committee members present indicating their agreement or disagreement or by a show of hands, unless the committee decides that a secret ballot is needed to determine a particular question.
- 47.5. If a secret ballot is needed, the chairperson of the meeting must decide how the ballot is to be conducted.

## **48 Minutes of committee meetings**

- 48.1. The committee must ensure that minutes are taken and kept of each committee meeting.

- 48.2. The minutes must record the following —
- 48.2.a. the names of the committee members present at the meeting;
  - 48.2.b. the name of any person attending the meeting under rule 44.5;
  - 48.2.c. the business considered at the meeting;
  - 48.2.d. any motion on which a vote is taken at the meeting and the result of the vote.
- 48.3. The minutes of a committee meeting must be entered in the Association's minute book within 7 days after the meeting is held.
- 48.4. The committee must ensure that the minutes of a committee meeting are reviewed and approved as correct by a motion at the next committee meeting.
- 48.5. When the minutes of a committee meeting have been accepted as correct they are, until the contrary is proved, evidence that —
- 48.5.a. the meeting to which the minutes relate was duly convened and held; and
  - 48.5.b. the matters recorded as having taken place at the meeting took place as recorded; and
  - 48.5.c. any appointment purportedly made at the meeting was validly made.

#### Note

Note for this rule:

Section 42(6) of the Act requires details relating to the disclosure of a committee member's material personal interest in a matter being considered at a committee meeting to be recorded in the minutes of the meeting.

## Division 5 - Subcommittees and subsidiary offices

### 49 Subcommittees and subsidiary offices

- 49.1. To help the committee in the conduct of the Association's business, the committee may, in writing, do either or both of the following —
- 49.1.a. appoint one or more subcommittees;
  - 49.1.b. create one or more subsidiary offices and appoint people to those offices.
- 49.2. A subcommittee may consist of the number of people, whether or not members, that the committee considers appropriate.
- 49.3. A person may be appointed to a subsidiary office whether or not the person is a member.
- 49.4. Subject to any directions given by the committee —
- 49.4.a. a subcommittee may meet and conduct business as it considers appropriate; and
  - 49.4.b. the holder of a subsidiary office may carry out the functions given to the holder as the holder considers appropriate.

## 50 Delegation to subcommittees and holders of subsidiary offices

50.1. In this rule —

**non-delegable duty** means a duty imposed on the committee by the Act or another written law.

50.2. The committee may, in writing, delegate to a subcommittee or the holder of a subsidiary office the exercise of any power or the performance of any duty of the committee other than —

50.2.a. the power to delegate; and

50.2.b. a non-delegable duty.

50.3. A power or duty, the exercise or performance of which has been delegated to a subcommittee or the holder of a subsidiary office under this rule, may be exercised or performed by the subcommittee or holder in accordance with the terms of the delegation.

50.4. The delegation may be made subject to any conditions, qualifications, limitations or exceptions that the committee specifies in the document by which the delegation is made.

50.5. The delegation does not prevent the committee from exercising or performing at any time the power or duty delegated.

50.6. Any act or thing done by a subcommittee or by the holder of a subsidiary office, under the delegation has the same force and effect as if it had been done by the committee.

50.7. The committee may, in writing, amend or revoke the delegation.

## Part 6 - GENERAL MEETINGS OF ASSOCIATION

### 51 Annual general meeting

- 51.1. The annual general meeting of the Association must take place within 3 months of the end of each financial year.

#### Note

Note for this subrule -

Notwithstanding that these rules require the annual general meeting to be held within 3 months of the end of each financial year, refer to section 50(3)(b) of the Act regarding notices which must be given to the Commissioner if the annual general meeting is not going to be held within 3 months.

- 51.2. The committee must determine the date, time and place of the annual general meeting.
- 51.3. The ordinary business of the annual general meeting is as follows —
- 51.3.a. to confirm the minutes of the previous annual general meeting and of any special general meeting held since then if the minutes of that meeting have not yet been confirmed;
  - 51.3.b. to receive and consider —
    - 51.3.b.i. the committee's annual report on the Association's activities during the preceding financial year; and
    - 51.3.b.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 Act; and
    - 51.3.b.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 Act;
    - 51.3.b.iv. if required to be presented for consideration under Part 5 of the Act, a copy of the report of the review or auditor's report on the financial statements or financial report;
  - 51.3.c. to elect the committee members;
  - 51.3.d. if applicable, to appoint or remove a reviewer or auditor of the Association in accordance with the Act;
  - 51.3.e. to confirm or vary the entrance fees, subscriptions and other amounts (if any) to be paid by members.
- 51.4. Any other business of which notice has been given in accordance with these rules may be conducted at the annual general meeting.



#### Note

Note for this rule:

Unless the Commissioner allows otherwise, under section 50(3) of the Act the annual general meeting must be held within 6 months after the end of the Association's financial year. If it is the first annual general meeting, section 50(2) of the Act provides that it may be held at any time within 18 months after incorporation.

## 52 Special general meetings

- 52.1. The committee may convene a special general meeting.
- 52.2. The committee must convene a special general meeting if at least 20% of the members require a special general meeting to be convened.
- 52.3. The members requiring a special general meeting to be convened must —
  - 52.3.a. make the requirement by written notice given to the secretary; and
  - 52.3.b. state in the notice the business to be considered at the meeting; and
  - 52.3.c. each sign the notice.
- 52.4. The special general meeting must be convened within 28 days after notice is given under subrule 52.3.a
- 52.5. If the committee does not convene a special general meeting within that 28 day period, the members making the requirement (or any of them) may convene the special general meeting.
- 52.6. A special general meeting convened by members under subrule 52.5 —
  - 52.6.a. must be held within 3 months after the date the original requirement was made; and
  - 52.6.b. may only consider the business stated in the notice by which the requirement was made.

## 53 Notice of general meetings

- 53.1. The secretary or, in the case of a special general meeting convened under subrule 52.5, the members convening the meeting, must give to each member —
  - 53.1.a. at least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting; or
  - 53.1.b. at least 14 days' notice of a general meeting in any other case.
- 53.2. The notice must —
  - 53.2.a. specify the date, time and place of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this ; and
  - 53.2.b. indicate the general nature of each item of business to be considered at the meeting; and

53.2.c. if the meeting is the annual general meeting, include the names of any members who have nominated for election to the committee under rule 33.2; and

53.2.d. if a special resolution is proposed —

53.2.d.i. set out the wording of the proposed resolution as required by section 51(4) of the Act; and

53.2.d.ii. state that the resolution is intended to be proposed as a special resolution; and

53.2.d.iii. comply with rule 54.7.

#### Note

Note for this paragraph:

Section 51(1) of the Act states that a resolution is a special resolution if it is passed —

(a) at a general meeting of an incorporated association; and

(b) by the votes of not less than three-fourths of the members of the association who cast a vote at the meeting.

## 54 Proxies

54.1. Subject to subrule 54.2, an ordinary member may appoint an individual who is an ordinary member as their proxy to vote and speak on their behalf at a general meeting.

54.2. An ordinary member may be appointed the proxy for not more than 5 other members.

54.3. The appointment of a proxy must be in writing and signed by the member making the appointment.

54.4. The member appointing the proxy may give specific directions as to how the proxy is to vote on their behalf.

54.5. 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.

54.6. If the committee has approved a form for the appointment of a proxy, the member may use that form or any other form —

54.6.a. that clearly identifies the person appointed as the member's proxy; and

54.6.b. that has been signed by the member.

54.7. Notice of a general meeting given to an ordinary member under rule 53 must —

54.7.a. state that the member may appoint an individual who is an ordinary member as a proxy for the meeting; and

54.7.b. include a copy of any form that the committee has approved for the appointment of a proxy.

54.8. A form appointing a proxy must be given to the secretary before the commencement of the general meeting for which the proxy is appointed.

54.9. 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.

54.1.

54.2.

## **55 General meeting at more than one place**

### **Note**

Taken from the constitution of the West Australian Cricket Association.

55.1. A general meeting may be held in two or more places linked together by any technology that:

55.1.a. gives the members as a whole in those places a reasonable opportunity to participate in proceedings; and

55.1.b. enables the chair of the meeting to be aware of proceedings in each place; and

55.1.c. enables the members in each place to vote on a show of hands and on a poll.

55.2. If a general meeting is held in two or more places under subrule 55.1 —

55.2.a. a member present at one of the places is taken to be present at the meeting; and

55.2.b. the chair of that meeting may determine at which place the meeting is taken to have been held.

## **56 Presiding member and quorum for general meetings**

56.1.

56.2. The chairperson or, in the chairperson's absence, the deputy chairperson must preside as chairperson of each general meeting.

56.3. If the chairperson and deputy chairperson are absent or are unwilling to act as chairperson of a general meeting, the committee members at the meeting must choose one of them to act as chairperson of the meeting.

56.4. No business is to be conducted at a general meeting unless a quorum is present.

56.5. If a quorum is not present within 30 minutes after the notified commencement time of a general meeting —

56.5.a.

56.5.b. in the case of a special general meeting — the meeting lapses; or

56.5.c. in the case of the annual general meeting — the meeting is adjourned to —

56.5.c.i. the same time and day in the following week; and

56.5.c.ii. the same place, unless the chairperson specifies another place at the time of the adjournment or written notice of another place is given to the members before the day to which the meeting is adjourned.

56.6. If —

56.6.a. a quorum is not present within 30 minutes after the commencement time of an annual general meeting held under subrule 56.5.c; and

56.6.b. either 10 ordinary members, or 10 percent of the ordinary members of the Association, are present at the meeting,

those members present are taken to constitute a quorum.

## **57 Adjournment of general meeting**

57.1. The chairperson of a general meeting at which a quorum is present may, with the consent of a majority of the ordinary members present at the meeting, adjourn the meeting to another time at the same place or at another place.

57.2. Without limiting subrule 57.1, a meeting may be adjourned —

57.2.a. if there is insufficient time to deal with the business at hand; or

57.2.b. to give the members more time to consider an item of business.

57.3. No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.

57.4. Notice of the adjournment of a meeting under this rule is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with rule 53.

## **58 Voting at general meeting**

58.1. On any question arising at a general meeting —

58.1.a. subject to subrule 58.6, each ordinary member has one vote unless the member may also vote on behalf of a body corporate under subrule 58.2; and

58.1.b. ordinary members may vote personally or by proxy.

58.2. An ordinary member that is a body corporate may, in writing, appoint an individual, whether or not the individual is a member, to vote on behalf of the body corporate on any question at a particular general meeting or at any general meeting, as specified in the document by which the appointment is made.

58.3. A copy of the document by which the appointment is made must be given to the secretary before any general meeting to which the appointment applies.

58.4. The appointment has effect until —

58.4.a. the end of any general meeting to which the appointment applies; or

- 58.4.b. the appointment is revoked by the body corporate and written notice of the revocation is given to the secretary.
- 58.5. 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.
- 58.6. If votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.
- 58.7. If the question is whether or not to confirm the minutes of a previous general meeting, only members who were present at that meeting may vote.
- 58.8. For a person to be eligible to vote at a general meeting as an ordinary member, or on behalf of an ordinary member that is a body corporate under subrule 58.2, the ordinary member —
  - 58.8.a. must have been an ordinary member at the time notice of the meeting was given under rule 53; and
  - 58.8.b. must have paid the membership fee for the period up to and including the date of the general meeting; and
  - 58.8.c. must not have any other overdue debts to the Association at the time of the general meeting.
- 58.9. Debts of the following types are excluded for the purposes of rule 58.8.c —
  - 58.9.a. Pledged donations to a donation drive.
- 58.10. If a general meeting is adjourned as per rule 57, only people who were eligible to vote at the first session of the meeting, will be eligible to vote when the meeting resumes.

## **59 When special resolutions are required**

- 59.1. A special resolution is required if it is proposed at a general meeting —
  - 59.1.a. to affiliate the Association with another body; or
  - 59.1.b. to request the Commissioner to apply to the State Administrative Tribunal under section 109 of the Act for the appointment of a statutory manager.
- 59.2. Subrule 59.1 does not limit the matters in relation to which a special resolution may be proposed.

### Note

Note for this rule:

Under the Act, a special resolution is required if an incorporated association proposes to do any of the following —

- (a) to adopt (the) model rules (section 29(1));
- (b) to alter its rules, including changing the name of the association (section 30(1));
- (c) to decide to apply for registration or incorporation as a prescribed body corporate (section 93(1));
- (d) to approve the terms of an amalgamation with one or more other incorporated associations (section 102(4));
- (e) to be wound up voluntarily (section 121(2)) or by the Supreme Court (section 124(a) and Schedule 4 item 9);
- (f) to cancel its incorporation (section 129).

## 60 Determining whether resolution carried

60.1. In this rule —

**poll** means the process of voting in relation to a matter that is conducted in writing.

60.2. Subject to subrule 60.4, the chairperson of a general meeting may, on the basis of general agreement or disagreement or by a show of hands, declare that a resolution has been —

60.2.a. carried; or

60.2.b. carried unanimously; or

60.2.c. carried by a particular majority; or

60.2.d. lost.

60.3. If the resolution is a special resolution, the declaration under subrule 60.2 must identify the resolution as a special resolution.

60.4. If a poll is demanded on any question by the chairperson of the meeting or by at least 3 other ordinary members present in person or by proxy —

60.4.a. the poll must be taken at the meeting in the manner determined by the chairperson;

60.4.b. the chairperson must declare the determination of the resolution on the basis of the poll.

60.5. If a poll is demanded on the election of the committee or on a question of an adjournment, the poll must be taken immediately.

60.6. If a poll is demanded on any other question, the poll must be taken before the close of the meeting at a time determined by the chairperson.

- 60.7. A declaration under subrule 60.2 or 60.4 must be entered in the minutes of the meeting, and the entry is, without proof of the voting in relation to the resolution, evidence of how the resolution was determined.

## **61 Minutes of general meeting**

- 61.1. The secretary, or a person authorised by the committee from time to time, must take and keep minutes of each general meeting.
- 61.2. The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- 61.3. In addition, the minutes of each annual general meeting must record —
- 61.3.a. the names of the ordinary members attending the meeting; and
  - 61.3.b. any proxy forms given to the Secretary of the meeting under rule 54.8; and
  - 61.3.c. the financial statements or financial report presented at the meeting, as referred to in rule 51.3.b.ii or 51.3.b.iii; and
  - 61.3.d. any report of the review or auditor's report on the financial statements or financial report presented at the meeting, as referred to in rule 51.3.b.iv.
- 61.4. The minutes of a general meeting must be entered in the Association's minute record within 7 days after the meeting is held.
- 61.5. The chairperson must ensure that the minutes of a general meeting are endorsed as correct by a motion at the next general meeting.
- 61.6. When the minutes of a general meeting have been endorsed as correct they are, in the absence of evidence to the contrary, taken to be proof that —
- 61.6.a. the meeting to which the minutes relate was duly convened and held; and
  - 61.6.b. the matters recorded as having taken place at the meeting took place as recorded; and
  - 61.6.c. any election or appointment purportedly made at the meeting was validly made.

## **Part 7 - FINANCIAL MATTERS**

### **62 Source of funds**

The funds of the Association may be derived from entrance fees, subscriptions, donations, fund-raising activities, grants, interest and any other sources approved by the committee.

### **63 Control of funds**

- 63.1. The Association must open one or more accounts in the name of the Association with a financial institution from which all expenditure of the Association is made and into which all funds received by the Association are deposited.
- 63.2. Subject to any restrictions imposed at a general meeting, the committee may approve expenditure on behalf of the Association.
- 63.3. The committee may authorise the treasurer to expend funds on behalf of the Association up to a specified limit or specified purpose without requiring approval from the committee for each item on which the funds are expended.
- 63.4. All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the Association must be signed by —
  - 63.4.a. 2 committee members; or
  - 63.4.b. one committee member and a person authorised by the committee.
- 63.5. All funds of the Association must be deposited into the Association's accounts within 10 working days after their receipt unless otherwise approved by the by-laws.

### **64 Financial statements and financial reports**

- 64.1. 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.
- 64.2. Without limiting subrule 64.1, those requirements include —
  - 64.2.a. if the Association is a tier 1 association, the preparation of the financial statements; and
  - 64.2.b. if the Association is a tier 2 association or tier 3 association, the preparation of the financial report; and
  - 64.2.c. if required, the review or auditing of the financial statements or financial report, as applicable; and
  - 64.2.d. the presentation to the annual general meeting of the financial statements or financial report, as applicable; and



- 64.2.e. if required, the presentation to the annual general meeting of the copy of the report of the review or auditor's report, as applicable, on the financial statements or financial report.

#### Note

Notes for this rule:

1. Under section 66 of the Act, an incorporated association must keep financial records that —
  - (a) correctly record and explain its transactions and financial position and performance; and
  - (b) enable true and fair financial statements to be prepared in accordance with Part 5 Division 3 of the Act.
2. Under section 67 of the Act, an incorporated association must retain its financial records for at least 7 years after the transactions covered by the records are completed.

## **Part 8 - GENERAL MATTERS**

### **65 By-laws**

- 65.1. The committee shall have the power to make, alter and rescind any by-laws that the committee considers necessary for the effective administration of the Association.
- 65.2. The Association may, by resolution at a general meeting, make, amend or revoke by-laws.
- 65.3. By-laws may —
- 65.3.a. provide for the rights and obligations that apply to any classes of membership approved under rule 8; and
  - 65.3.b. impose restrictions on the committee's powers, including the power to dispose of the Association's assets; and
  - 65.3.c. impose requirements relating to the financial reporting and financial accountability of the association and the auditing of the Association's accounts; and
  - 65.3.d. provide for any other matter the Association considers necessary or convenient to be dealt with in the by-laws.
- 65.4. A by-law is of no effect to the extent that it is inconsistent with the Act, the regulations or these rules.
- 65.5. Without limiting rule 65.4, a by-law made for the purposes of rule 65.3.c may only impose requirements on the Association that are additional to, and do not restrict, a requirement imposed on the Association under Part 5 of the Act.
- 65.6. At the request of a member, the Association must make a copy of the by-laws available for inspection by the member.

### **66 Executing documents**

- 66.1. The Association may execute a document if the document is signed by —
- 66.1.a. 2 committee members; or
  - 66.1.b. one committee member and a person authorised by the committee.
- 66.2. The secretary must make a written record of each document executed.
- 66.3. The Association does not have a common seal.

### **67 Giving notices to members**

- 67.1. In this rule —
- recorded** means recorded in the register of members.
  - direct message** has the meaning given in rule 1.

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

67.2.a. sent by electronic transmission to an appropriate recorded electronic address of the member; or

67.2.b. delivered by hand to the recorded physical address of the member; or

67.2.c. sent by prepaid post to the recorded postal address of the member; or

67.2.d. sent by direct message to the member, for a type of notice which these rules allow to be given by direct message.

## **68 Custody of books and securities**

68.1. Subject to subrule 68.2, the books and any securities of the Association must be kept in the secretary's custody or under the secretary's control.

68.2. 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.

68.3. Subrules 68.1 and 68.2 have effect except as otherwise decided by the committee.

68.4. The books of the Association must be retained for at least 7 years.

## **69 Record of office holders**

The record of committee members and other persons authorised to act on behalf of the Association that is required to be maintained under section 58(2) of the Act must be kept in the secretary's custody or under the secretary's control.

### **Note**

Note for this rule:

Section 58 of the Act —

(a) sets out the details of the record that an incorporated association must maintain of the committee members and certain others; and

(b) provides for members to inspect, make a copy of or take an extract from the record; and

(c) prohibits a person from disclosing information in the record except for authorised purposes.

## **70 Inspection of records and documents**

70.1. Subrule 70.2 applies to a member who wants to inspect —

70.1.a. the register of members under section 54(1) of the Act; or

70.1.b. 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

- 70.1.c. any other record or document of the association.
- 70.2. The member must contact the secretary to make the necessary arrangements for the inspection.
- 70.3. The inspection must be free of charge.
- 70.4. 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.
- 70.5. The member may make a copy of or take an extract from a record or document referred to in subrule 70.1.c but does not have a right to remove the record or document for that purpose.

**Note**

Note for this subrule:

Sections 54(2) and 58(4) of the Act provide for the making of copies of, or the taking of extracts from, the register referred to in subrule (1)(a) and the record referred to in subrule (1)(b).

- 70.6. The member must not use or disclose information in a record or document referred to in subrule 70.1.c except for a purpose —
- 70.6.a. that is directly connected with the affairs of the Association; or
- 70.6.b. that is related to complying with a requirement of the Act.

**Note**

Note for this subrule:

Sections 57(1) and 58(5) of the Act impose restrictions on the use or disclosure of information in the register referred to in subrule (1)(a) and the record referred to in subrule (1)(b).

## **71 Publication by committee members of statements about Association business prohibited**

A committee member must not publish, or cause to be published, any statement about the business conducted by the Association at a general meeting or committee meeting unless —

- 71.1. the committee member has been authorised to do so at a committee meeting; and
- 71.2. the authority given to the committee member has been recorded in the minutes of the committee meeting at which it was given.

## **72 Distribution of surplus property on cancellation of incorporation or winding up**

72.1. In this rule -

**surplus property**, in relation to the Association, means property remaining after satisfaction of —

72.1.a. the debts and liabilities of the Association; and

72.1.b. the costs, charges and expenses of winding up or cancelling the incorporation of the Association,

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

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

72.3. If the Association is wound up or its endorsement as a deductible gift recipient is revoked (whichever occurs first), any surplus of the following assets shall be transferred to another organisation with similar objects, which is charitable at law, to which income tax deductible gifts can be made —

72.3.a. gifts of money or property for the principal purpose of the organisation;

72.3.b. contributions made in relation to an eligible fundraising event held for the principal purpose of the Association

72.3.c. money received by the Association because of such gifts and contributions

72.4. If the Association is wound up, after it has paid all debts and other liabilities (including the costs of winding up), any remaining assets —

72.4.a. must not be distributed to the members or former members of the Association, and

72.4.b. subject to the requirements of Australian laws and any Australian court order, must be distributed to another organisation or other organisations, with similar purposes, which is/are charitable at law, and which is/are not carried on for the profit or personal gain of members.

### **Note**

Note for this rule:

Section 24(1) of the Act sets out a provision that is implied in these rules describing the entities to which the surplus property of an incorporated association may be distributed on the cancellation of the incorporation or the winding up of the association. Part 9 of the Act deals with the winding up of incorporated associations, and Part 10 of the Act deals with the cancellation of the incorporation of incorporated associations.

**Note**

(CAP3-Community-Shed)

Subrules (3) and (4) use the recommended language from the ATO's Community Sheds help sheet.

## **73 Alteration of rules**

If the Association wants to alter or rescind any of these rules, or to make additional rules, the Association may do so only by special resolution and by otherwise complying with Part 3 Division 2 of the Act.

**Note**

Note for this rule:

Section 31 of the Act requires an incorporated association to obtain the Commissioner's approval if the alteration of its rules has effect to change the name of the association. Section 33 of the Act requires an incorporated association to obtain the Commissioner's approval if the alteration of its rules has effect to alter the objects or purposes of the association or the manner in which surplus property of the association must be distributed or dealt with if the association is wound up or its incorporation is cancelled.

**Note**

Any alteration of the rules must be lodged with the Commissioner within one month of the passage of the special resolution.

## Own rules matters

To assist with the completion of *Form 5 - Notice of special resolution to change rules*, this section provides a correspondence between:

- Schedule 1 of the Act — *Matters to be provided for in rules of an incorporated association*; and
- The relevant sections of these rules.

The text below is exactly reproduced from the Act (as at 01 Jul 2016), which varies from the text of Form 5 in minor details.

## Division 1 — Matters to be addressed

1. The name of the incorporated association.	Key Information - Item A.
2. The objects or purposes of the incorporated association.	Key Information - Item B.
3. The qualifications (if any) for membership of the incorporated association and provision for when membership commences and when it ceases.	Part 3, Div 1, s5 — 9
4. The register of members of the incorporated association.	Part 3, Div 3, s13
5. The entrance fees, subscriptions and other amounts (if any) to be paid by members of the incorporated association.	Part 3, Div 2, s12
6. The name, constitution, membership and powers of the management committee or other body having the management of the incorporated association (in this clause referred to as the committee) and provision for the following —	Part 5. Name of governing body: "management committee" - refer Div 1, s27. Powers of committee: refer Div 1, s27. Constitution (composition) of management committee: refer Div 2, s28 — 31
(a) the election or appointment of members of the committee;	Part 5, Div3, s32 — s35
(b) the terms of office of members of the committee;	Part 5, Div3, s36
(c) the grounds on which, or reasons for which, the office of a member of the committee shall become vacant;	Part 5, Div3, s37 & s38
(d) the filling of casual vacancies occurring on the committee;	Part 5, Div3, s39

(e) the quorum and procedure at meetings of the committee;	Quorum: Key Information - Item D. Procedure at committee meetings: Part 5, Div 4
(f) the making and keeping of records of the proceedings at meetings of the committee;	Part 5, Div 4, s48
(g) subject to Division 2 clause 1, the circumstances (if any) in which payment may be made to a member of the committee out of the funds of the association.	General expenses: Part 2, s4 Payments to committee members specifically: Part 5, Div 3, s41 Control of funds: Part 7, s63
7. The quorum and procedure at general meetings of members of the incorporated association.	Quorum: Key Information, Item C. Procedure at general meetings: Part 6, s54 — s61
8. The notification of members or classes of members of general meetings of the incorporated association and their rights to attend and vote at those meetings.	Part 6, s53
9. The time within which, and manner in which, notices of general meetings and notices of motion are to be given, published or circulated.	Part 6, s53
10. Subject to Division 2 clause 3, the number of members, expressed as a percentage of membership, who may at any time require that a general meeting of the incorporated association be convened.	Part 6, s52
11. The manner in which the funds of the association are to be controlled.	Part 7, s63
12. Subject to Division 2 clauses 4 and 5, the day in each year on which the financial year of the incorporated association commences.	Key Information - Item E.
13. The intervals between general meetings of members of the incorporated association and the manner of calling general meetings.	Part 6, s51 — s53
14. The manner of altering and rescinding the rules and of making additional rules of the incorporated association.	Part 8, s73
15. Provisions for the custody and use of the common seal of the incorporated association, if it has one.	N/A - no common seal.
16. The custody of books and securities of the incorporated association.	Part 8, s68



17. The inspection by members of the incorporated association of records and documents of the incorporated association.	Part 8, s70
18. A procedure for dealing with any dispute under or relating to the rules — (a) between members; or (b) between members and the incorporated association.	Part 4
19. Subject to section 24, the manner in which surplus property of the incorporated association must be distributed or dealt with if the association is wound up or its incorporation is cancelled.	Part 8, s72
20. A statement that the property and income of the association must be applied solely towards promoting the association's objects or purposes 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.  <i>This is an additional inclusion on Form 05 that is not in Schedule 1 of the Act.</i>	Part 2, s4
21. The association's financial year will be the 12 month period —  <i>This is an additional inclusion on Form 05 that is not in Schedule 1 of the Act.</i>	starting from <b>1 July to 30 June.</b> (As per Key Information - E.)

## Division 2 — Particular requirements for certain rules

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<p>1. Payment to members of management committee</p> <p>(1) Any rules made as mentioned in Division 1 item 6(g) are to provide for payment to be made to a member of the management committee of an incorporated association out of the funds of the association only if the payment is authorised by resolution of the association.</p> <p>(2) Subclause (1) does not apply to payment to a member of the management committee for out-of-pocket expenses for travel and accommodation in connection with the performance of the member's functions.</p>	<p>Part 2, s4 states that the Association is a not-for-profit body, and provides that payments can be made to members (including committee members) for reimbursement of expenses and the like.</p> <p>Part 5, Div 3, s41 specifies when payments can be made to committee members in connection with out-of-pocket expenses for travel and accommodation in connection with the performance of the member's functions.</p> <p>There are no other provisions in the rules to make payments to committee members (e.g. honorariums) and thus there is no provision for such payments to be authorised by a resolution of the Association.</p>
<p>2. Entitlement of members in respect of general meetings</p> <p>The rules made as mentioned in Division 1 item 8 must provide for all members of the incorporated association to be entitled to receive notice of and to attend any general meeting of the association.</p>	<p>Rule 53 requires that "each member" must be given notice of a general meeting. The definition of member in s1 includes ordinary members and associate members, i.e. all members, regardless of their membership class or voting rights.</p>
<p>3. Number of members who may call a general meeting</p> <p>The rules made for the purpose of Division 1 item 10 cannot specify greater than the prescribed percentage of members as the number of members who may at any time require that a general meeting be convened in accordance with the rules of the incorporated association.</p>	<p>Part 6, s52, specifies that any 20% of members may require a general meeting to be convened, which complies with the prescribed percentage in s18 of the Regulations.</p>
<p>4. Financial year of associations incorporated under this Act</p>	<p>N/A - association is not incorporated under the repealed Act.</p> <p>Note the financial year of the association is defined at Key Information - Item E.</p>

5. Transitional provisions as to financial year of associations incorporated under the repealed Act.	N/A - association is not incorporated under the repealed Act.
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