



## **RULES OF ESPERANCE COMMUNITY ARTS (INC)**

June 2022



Department of Local Government, Sport and Cultural Industries  
Department of Primary Industries and Regional Development



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## PART 1 — PRELIMINARY

### 1 Name

The name of the Association shall be Esperance Community Arts (Inc)

### 2 Objects and values

- (1) The objects of the Association shall be to promote, coordinate, support and build capacity and sustainability of the arts in Esperance and surrounding areas through the practice of community arts by:

- (a) Disseminating arts-related information between artists, arts and culture groups, government agencies, funding bodies and the general public;
- (b) Providing advice and assistance in planning and promoting arts and culture related projects and events;
- (c) **Promoting and supporting** the arts and artistic and cultural endeavours;
- (d) Assisting in the development of funding applications **related to culture and the arts**;
- (e) Collaborating and partnering with arts and cultural groups and other organisations in the delivery of arts and culture related programs;
- (f) Auspicing arts and culture related projects on behalf of other organisations or individuals;
- (g) Identifying and promoting opportunities for the arts and culture in relation to the tourism, commercial, and educational sectors;
- (h) Promoting and developing community participation, audience development and enjoyment of the arts and culture;
- (i) Delivering arts and culture related programs

in accordance with strategic priorities established by the Board.

*[Objects (1)(c) and (1)(d) amended at SGM 21 January 2019. Preamble to subrule 2(1) amended at AGM 26 June 2019 ]*

- (2) Recognition of Aboriginal people and culture

Esperance Community Arts (Inc) honours the Aboriginal and Torres Strait Islander people, the First Australians, whose lands, winds and waters we all now share; and we acknowledge their unique values, and their ancient and enduring cultures, which deepen and enrich the life of our community.

We recognise that Nyungar people, as the traditional custodians and occupants of the lands of the Esperance area:

- (a) have a spiritual, social, cultural and economic relationship with their traditional lands and waters, and

- (b) have made and continue to make a unique and lasting contribution to the identity and wellbeing of Western Australia.

### 3 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 10(6);

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

**Board** means the committee of Management of the Association referred to in rule 29;

**Board meeting** means a meeting of the Board;

**Board member** means a member of the Board;

**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 66;

**chairperson** means the Board 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;

**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 —
  - (i) the methods by which financial statements are prepared; and
  - (ii) 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 rule 4;

**Fund** means the Esperance Community Arts Fund established in accordance with Part 10 of these rules;

**general meeting**, of the Association, means a meeting of the Association that all members are entitled to receive notice of and to attend;

**in writing** means conveyed by text written or printed on paper, or conveyed in an electronic format which is able to be printed by an electronic printer;

**member** means a person (including a body corporate) who is an ordinary member or an associate member of the Association;

**ordinary Board member** means a Board member who is not an office holder of the Association under rule 29(3);

**ordinary member** means a member with the rights referred to in rule 10(5);

**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 Board member holding office as the secretary of the Association;

**special general meeting** 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 Board under rule 50(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 Board member holding office as the treasurer of the Association.

[Definition of 'Fund' added by AGM 26 June 2019].

## **4 Financial year.**

The financial year of the Association shall commence on the first day of January each year and conclude on the last day of December of that year.

## **PART 2 — ASSOCIATION TO BE NOT FOR PROFIT BODY**

### **5 Not-for-profit body**

- (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.
- (2) A payment may be made to a member out of the funds of the Association only if it is authorised under subrule (3).
- (3) A payment to a member out of the funds of the Association is authorised if it is —
  - (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
  - (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
  - (c) the payment of reasonable rent to the member for premises leased by the member to the Association; or
  - (d) the reimbursement of reasonable expenses properly incurred by the member on behalf of the Association.
- (4) Where the member referred to in subrule (3) is a Board member, the payment concerned must be within the scope of an authorising resolution made by members at an annual general meeting or a special general meeting.

*[Subrule (4) inserted at AGM 14<sup>th</sup> September 2020]*

## **PART 3 — MEMBERS**

### **Division 1 — Membership**

### **6 Eligibility for membership**

- (1) Any person who supports the objects or purposes of the Association is eligible to apply to become a member.

- (2) An individual who has not reached the age of 15 years is not eligible to apply for a class of membership that confers full voting rights.

## **7 Applying for membership**

- (1) A person who wants to become a member must apply in writing to the Association using the Association's membership application form.
- (2) The application must be signed by the applicant.
- (3) The applicant must specify in the application the class of membership, if there is more than one, to which the application relates.

## **8 Dealing with membership applications**

- (1) The Board must consider each application for membership of the Association and decide whether to accept or reject the application.
- (2) Subject to subrule (3), the Board must consider applications in the order in which they are received by the Association.
- (3) The Board may delay its consideration of an application if the Board 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.
- (4) The Board must not accept an application unless the applicant —
  - (a) is eligible under rule 6; and
  - (b) has applied under rule 7.
- (5) The Board may reject an application even if the applicant —
  - (a) is eligible under rule 6; and
  - (b) has applied under rule 7.
- (6) The Board must notify the applicant of the Board's decision to accept or reject the application as soon as practicable after making the decision.
- (7) If the Board rejects the application, the Board is not required to give the applicant its reasons for doing so.

## **9 Becoming a member**

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

- (a) the Board accepts the application; and
- (b) the applicant pays any membership fees payable to the Association under rule 14.



## **10 Classes of membership**

- (1) The Association consists of ordinary members, corporate members, life members and any associate members provided for under subrule (2).
- (2) The Association may have any class of associate membership approved by resolution at a general meeting, including junior membership, senior membership, and honorary membership.
- (3) An individual who has not reached the age of 15 years is only eligible to be an associate member.
- (4) A person can only be an ordinary member or a life member or belong to one class of associate membership.
- (5) An ordinary member, a corporate member or a life member, has full voting rights and any other rights conferred on members by these rules or approved by resolution at a general meeting.
- (6) An associate member has the rights referred to in subrule (5) other than full voting rights.
- (7) The number of members of any class is not limited unless otherwise approved by resolution at a general meeting.

## **11 When membership ceases**

- (1) A person ceases to be a member when any of the following takes place —
  - (a) for a member who is an individual, the individual dies;
  - (b) for a member who is a body corporate, the body corporate is wound up;
  - (c) the person resigns from the Association under rule 12;
  - (d) the person is expelled from the Association under rule 17;
  - (e) the person ceases to be a member under rule 14(5).
- (2) The secretary must ensure that a record is kept, for at least one year after a person ceases to be a member, of —
  - (a) the date on which the person ceased to be a member; and
  - (b) the reason why the person ceased to be a member.

## **12 Resignation**

- (1) A member may resign from membership of the Association by giving written notice of the resignation to the secretary.
- (2) The resignation takes effect —
  - (a) when the secretary receives the notice; or

- (b) if a later time is stated in the notice, at that later time.
- (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.
- (4) The owed amount may be recovered by the Association in a court of competent jurisdiction as a debt due to the Association.

## **13 Rights not transferable**

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

### **Division 2 — Membership fees**

## **14 Membership fees**

- (1) The Board must recommend the entrance fee (if any) and the annual membership fee (if any) to be paid for membership of the Association to the Annual General Meeting or a Special General Meeting of the Association.
- (2) An Annual General Meeting or Special General Meeting may approve or vary the fees recommended by the Board.
- (3) The fees determined under subrule (1) may be different for different classes of membership.
- (4) A member must pay the annual membership fee to the treasurer, or another person authorised by the Board to accept payments, by the date (the ***due date***) determined by the Board.
- (5) If a member has not paid the annual 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.
- (6) If a person who has ceased to be a member under subrule (5) offers to pay the annual membership fee after the period referred to in that subrule has expired —
  - (a) the Board may, at its discretion, accept that payment; and
  - (b) if the payment is accepted, the person's membership is reinstated from the date the payment is accepted.

### **Division 3 — Register of members**

## **15 Register of members**

- (1) The secretary, or another person authorised by the Board, 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.

- (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.
- (3) The register of members must be kept at the secretary's place of residence, or at another place determined by the Board.
- (4) A member who wishes to inspect the register of members must contact the secretary to make the necessary arrangements.
- (5) If —
  - (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
  - (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 Board 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**

#### **16 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**

#### **17 Suspension or expulsion**

- (1) The Board may decide to suspend a member's membership or to expel a member from the Association if —
  - (a) the member contravenes any of these rules; or

- (b) the member acts detrimentally to the interests of the Association. The secretary must give the member written notice of the proposed suspension or expulsion at least 28 days before the Board meeting at which the proposal is to be considered by the Board.
- (2) The notice given to the member must state —
    - (a) when and where the Board meeting is to be held; and
    - (b) the grounds on which the proposed suspension or expulsion is based; and
    - (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 Board about the proposed suspension or expulsion;
  - (3) At the Board meeting, the Board must —
    - (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
    - (b) give due consideration to any submissions so made; and
    - (c) decide —
      - (i) whether or not to suspend the member's membership and, if the decision is to suspend the membership, the period of suspension; or
      - (ii) whether or not to expel the member from the Association.
  - (4) A decision of the Board to suspend the member's membership or to expel the member from the Association takes immediate effect.
  - (5) The Board must give the member written notice of the Board's decision, and the reasons for the decision, within 7 days after the Board meeting at which the decision is made.
  - (6) A member whose membership is suspended or who is expelled from the Association may, within 14 days after receiving notice of the Board's decision under subrule (5), give written notice to the secretary requesting the appointment of a mediator under rule 25.
  - (7) If notice is given under subrule (6), the member who gives the notice and the Board are the parties to the mediation.

## **18 Consequences of suspension**

- (1) During the period a member's membership is suspended, the member —
  - (a) loses any rights (including voting rights) arising as a result of membership; and
  - (b) is not entitled to a refund, rebate, relief or credit for membership fees paid, or payable, to the Association.
- (2) When a member's membership is suspended, the secretary must record in the register of members —
  - (a) that the member's membership is suspended; and
  - (b) the date on which the suspension takes effect; and

- (c) the period of the suspension.
- (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**

### **19 Terms used**

In this Division —

- (a) ***grievance procedure*** means the procedures set out in this Division;
- (b) ***party to a dispute*** includes a person —
  - (i) who is a party to the dispute; and
  - (ii) who ceases to be a member within 6 months before the dispute has come to the attention of each party to the dispute.

### **20 Application of Division**

The procedure set out in this Division (the grievance procedure) applies to disputes —

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

### **21 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.

### **22 How grievance procedure is started**

- (1) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 21, any party to the dispute may start the grievance procedure by giving written notice to the secretary of —
  - (a) the parties to the dispute; and
  - (b) the matters that are the subject of the dispute.
- (2) Within 28 days after the secretary is given the notice, a Board meeting must be convened to consider and determine the dispute.
- (3) The secretary must give each party to the dispute written notice of the Board meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.
- (4) The notice given to each party to the dispute must state —
  - (a) when and where the Board meeting is to be held; and

- (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 Board about the dispute.

(5) If —

- (a) the dispute is between one or more members and the Association; and
- (b) any party to the dispute gives written notice to the secretary stating that the party —
  - (i) does not agree to the dispute being determined by the Board; and
  - (ii) requests the appointment of a mediator under rule 25,

the Board must not determine the dispute.

## **23 Determination of dispute by the Board**

- (1) At the Board meeting at which a dispute is to be considered and determined, the Board must
  - (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 Board about the dispute; and
  - (b) give due consideration to any submissions so made; and
  - (c) determine the dispute.
- (2) The Board must give each party to the dispute written notice of the Board's determination, and the reasons for the determination, within 7 days after the committee meeting at which the determination is made.
- (3) A party to the dispute may, within 14 days after receiving notice of the Board's determination under subrule (1)(c), give written notice to the secretary requesting the appointment of a mediator under rule 25.
- (4) If notice is given under subrule (3), each party to the dispute is a party to the mediation.

## **Division 4 — Mediation**

### **24 Application of Division**

- (1) This Division applies if written notice has been given to the secretary requesting the appointment of a mediator —
  - (a) by a member under rule 17(6); or
  - (b) by a party to a dispute under rule 22(5)(b)(ii) or 23(3).
- (2) If this Division applies, a mediator must be chosen or appointed under rule 25.

## **25 Appointment of mediator**

- (1) The mediator must be a person chosen —
  - (a) if the appointment of a mediator was requested by a member under rule 17(6) — by agreement between the Member and the Board; or
  - (b) if the appointment of a mediator was requested by a party to a dispute under rule 22(5)(b)(ii) or 23(3) — by agreement between the parties to the dispute.
- (2) If there is no agreement for the purposes of subrule (1)(a) or (b), then, subject to subrules (3) and (4), the Board must appoint the mediator.
- (3) The person appointed as mediator by the Board 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 —
  - (a) a member under rule 17(6); or
  - (b) a party to a dispute under rule 22(5)(b)(ii); or
  - (c) a party to a dispute under rule 23(3) and the dispute is between one or more members and the Association.
- (4) The person appointed as mediator by the Board may be a member or former member of the Association but must not —
  - (a) have a personal interest in the matter that is the subject of the mediation; or
  - (b) be biased in favour of or against any party to the mediation.

## **26 Mediation process**

- (1) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- (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.
- (3) In conducting the mediation, the mediator must —
  - (a) give each party to the mediation every opportunity to be heard; and
  - (b) allow each party to the mediation to give due consideration to any written statement given by another party; and
  - (c) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- (4) The mediator cannot determine the matter that is the subject of the mediation.
- (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.

- (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.

## **27 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 17(6); 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 Board meeting or general meeting during the period of suspension or expulsion.

## **PART 5 — THE BOARD**

### **Division 1 — Powers of the Board**

## **28 The Board**

- (1) The Board members are the persons who, as the management committee of the Association, have the power to manage the affairs of the Association.
- (2) Subject to the Act, these rules, the by-laws (if any) and any resolution passed at a general meeting, the Board has power to do all things necessary or convenient to be done for the proper management of the affairs of the Association.
- (3) The Board 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 the Board and duties of members**

## **29 Board members**

- (1) (Deleted 27 June 2022)
- (2) The Board must at all times consist of at least six members.
- (3) The following are the office holders of the Association —
  - (a) the chairperson;
  - (b) the deputy chairperson;
  - (c) the secretary;



- (d) the treasurer.
- (4) The office holders are appointed by the Board from among the Board members at the first Board meeting following the Annual General Meeting of the Association or the general meeting referred to in rule 79(2).
- (5) A person may be a Board member if the person is —
  - (a) an individual who has reached 18 years of age; and
  - (b) an ordinary member or a life member.
- (6) A person must not hold 2 or more of the offices mentioned in subrule (3) at the same time.

*[Subrules (1) (a) to (d) altered at the AGM on 14<sup>th</sup> September 2020]*

### **30 Chairperson**

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

### **31 Secretary**

The Secretary has the following duties —

- (a) ensuring that the Association's correspondence is properly dealt with;
- (b) consulting with the chairperson regarding the business to be conducted at each Board meeting and general meeting;
- (c) ensuring that the notices required for meetings and for the business to be conducted at meetings are prepared and issued in accordance with the timeframes specified in subrules 44(1) and 54(1);
- (d) ensuring that the register of members is maintained, and that any changes in the membership are recorded in the register, as required under section 53(1) of the Act;
- (e) maintaining on behalf of the Association an up-to-date copy of these rules, as required under section 35(1) of the Act;
- (f) unless another member is authorised by the Board to do so, maintaining on behalf of the Association a record of Board members and other persons authorised to act on behalf of the Association, as required under section 58(2) of the Act;
- (g) 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;
- (h) ensuring that full and accurate minutes of Board meetings and general meetings are recorded;
- (i) carrying out any other duty given to the secretary under these rules or by the Board.

## **32 Treasurer**

The treasurer has the following duties —

- (a) ensuring that any amounts payable to the Association are collected and that receipts for those amounts are issued in the Association's name;
- (b) ensuring that any amounts paid to the Association are credited to the appropriate account of the Association, as directed by the Board;
- (c) ensuring that any payments to be made by the Association that have been authorised by the Board or at a general meeting are made on time;
- (d) ensuring that the Association complies with the relevant requirements of Part 5 of the Act;
- (e) ensuring the safe custody of the Association's financial records, financial statements and financial reports, as applicable to the Association;
- (f) if the Association is a tier 1 association, coordinating the preparation of the Association's financial statements before their submission to the Association's annual general meeting;
- (g) if the Association is a tier 2 association or tier 3 association, coordinating the preparation of the Association's financial report before its submission to the Association's annual general meeting;
- (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;
- (i) carrying out any other duty given to the treasurer under these rules or by the Board.

## **Division 3 — Election of Board members and tenure of office**

## **33 How members become Board members**

A member becomes a Board member if the member —

- (a) is elected to the Board at a general meeting; or
- (b) is appointed to the Board by the Board to fill a casual vacancy under rule 40;

## **34 Nomination of Board members**

- (1) At least 42 days before an annual general meeting, the secretary must send written notice to all the members —
  - (a) calling for nominations for election to the Board; and
  - (b) stating the date by which nominations must be received by the secretary to comply with subrule (2).

- (2) A member who wishes to be considered for election to the Board at the annual general meeting must nominate for election by ensuring that written notice of the nomination is received by the secretary at least 14 days before the annual general meeting.
- (3) The written notice must indicate to which of the categories of position specified in subrule 29(1) the nomination relates, and must include sufficient information in relation to the person nominating, including information addressing any selection criteria determined by the Board, to establish his or her eligibility for the class of position sought.
- (4) A corporate member may only make a nomination for the category of Board members specified in subrule 29(1)(b).
- (5) A member who is not a corporate member may nominate for one of the categories of Board member specified in subrules 29(1)(a), 29(1)(c) or 29(1)(d).
- (6) A member whose nomination does not comply with this rule is not eligible for election to the Board unless the member is nominated under rule 35(2).

### **35 Election of Board members**

- (1) At the annual general meeting, a separate election must be held for each of the categories of Board positions specified in rule 29(1).
- (2) If for any of the categories of position there is no nomination, the chairperson of the meeting may call for nominations of eligible candidates from the ordinary members present at the meeting.
- (3) If the number of members nominating for any category of position is not greater than the number of available positions in that category, and the chairperson of the meeting is satisfied that the nominee or nominees meet the eligibility requirements for that category of position, the chairperson of the meeting must declare the member or members elected to the position.
- (4) If more members have nominated for a category of position than the number of positions available, the ordinary members at the meeting must vote in accordance with procedures that have been determined by the Board to decide who is to be elected to the positions.
- (5) Each ordinary member, corporate member or life member present at the meeting may vote for a number of members equal to the number of vacant positions within the category concerned.
- (6) A member who has nominated for a position may vote for himself or herself.
- (7) The Chairperson of the meeting shall continue to preside at the meeting regardless of the outcome of any election.

### **36 Office holders of the Board**

- (1) At its first meeting following the Annual General Meeting or a special general meeting at which an election for Board members has been conducted, the Board shall elect from among its number a member to fill each of the roles specified in rule 29 (3).
- (2) A Board member nominated for any position under subrule (1) may vote for himself or herself.
- (3) A Board member shall not be eligible for appointment to the same office holder position for more than six consecutive annual terms.

### **37 Term of office**

- (1) The term of office of a Board member begins when the member —
  - (a) is elected at an annual general meeting or a special general meeting or under subrule 38(3)(b); or
  - (b) is appointed to fill a casual vacancy under rule 40.
- (2)
  - (a) Except as provided in subrule (b) or as otherwise determined by members at an annual general meeting or special general meeting, a Board member shall be elected for a term of two years.
  - (b) In order to ensure that the terms of one half of the members of the Board expire at each Annual General Meeting, a vacancy arising under rule 39 shall only be filled for the remainder of the term which applied to the position at the time the position became vacant
- (3) Subject to subrule (2) and rules 39 and 84, a Board member holds office until his or her position on the Board is declared vacant at the annual general meeting held two years after the meeting at which the Board member was elected.
- (4) A Board member may be re-elected.

### **38 Resignation and removal from office**

- (1) A Board member may resign from the Board by written notice given to the secretary or, if the resigning member is the secretary, given to the chairperson.
- (2) The resignation takes effect —
  - (a) when the notice is received by the secretary or chairperson; or
  - (b) if a later time is stated in the notice, at the later time.
- (3) At a general meeting, the Association may by resolution —
  - (a) remove a Board member from office; and
  - (b) elect a member who is eligible under rule 29 to fill the vacant position.

- (4) A Board member who is the subject of a proposed resolution under subrule (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.
- (5) The secretary or chairperson may give a copy of the representations to each member or, if they are not so given, the Board member may require them to be read out at the general meeting at which the resolution is to be considered.

### **39 When membership of the Board ceases**

A person ceases to be a Board member if the person —

- (a) dies or otherwise ceases to be a member; or
- (b) resigns from the Board or is removed from office under rule 38; or
- (c) becomes ineligible to accept an appointment or act as a Board member under section 39 of the Act;
- (d) becomes permanently unable to act as a Board member because of a mental or physical disability; or
- (e) fails to attend 3 consecutive Board meetings, of which the person has been given notice, without having notified the Board that the person will be unable to attend.

### **40 Filling casual vacancies**

- (1) The Board—
  - (a) must endeavour to appoint a member who is eligible under rule 29 to fill a position on the Board that has become vacant under rule 39 unless the vacancy arises less than 3 months prior to the date scheduled for the next annual general meeting;
  - (b) may appoint a member who is eligible under rule 29 to fill a position on the Board that was not filled by election at the most recent annual general meeting or under rule 38(3)(b).
- (2) If the position of secretary becomes vacant, the Board must appoint a member who is eligible under rule 29 to fill the position within 14 days after the vacancy arises.
- (3) Subject to the requirement for a quorum under rule 47, the Board may continue to act despite any vacancy in its membership.
- (4) If there are fewer Board members than required for a quorum under rule 47, the Board may act only for the purpose of —
  - (a) appointing Board members under this rule; or
  - (b) convening a general meeting.

### **41 Validity of acts**

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

## **42 Payments to Board members**

- (1) In this rule —  
*Board member* includes a member of a subcommittee;  
*Board meeting* includes a meeting of a subcommittee.
- (2) If approved by the Board, a Board member may be paid out of the funds of the Association for any out-of-pocket expenses for travel and accommodation properly incurred —
  - (a) in attending a Board meeting or
  - (b) in attending a general meeting; or
  - (c) otherwise in connection with the Association's business.

## **Division 4 — Board meetings**

### **43 Board meetings**

- (1) The Board will meet on dates and times in accordance with the Calendar agreed by the Board and maintained by the Secretary, provided that the Board must meet at least 4 times in each year.
- (2) The date, time and place of the first Board meeting must be determined by the Board members as soon as practicable after the annual general meeting at which Board members are elected.
- (3) Special Board meetings may be convened by the chairperson or any 2 Board members.

### **44 Notice of Board meetings**

- (1) Notice of any Board meeting the date and time of which is not included in the Calendar referred to in rule 43 (1), or which is to be held on a date or at a time other than that stated on the Calendar, must be given to each Board member at least 7 days before the time of the meeting.
- (2) Notice of Board meetings included in the Calendar referred to in rule 43 (1) must be given to each Board member at least 4 days before the date of the meeting.
- (3) The notice must state the date, time and place of the meeting and must describe the general nature of the business to be conducted at the meeting and include any documents relevant to that business.
- (4) Unless subrule (5) applies, the only business that may be conducted at the meeting is the business described in the notice.
- (5) Business that has not been described in the notice may be conducted at the meeting if the Board members at the meeting unanimously agree to deal with that business.

## **45 Procedure and order of business**

- (1) The chairperson or, in the chairperson's absence, the deputy-chairperson must preside as chairperson of each Board meeting.
- (2) If the chairperson and deputy chairperson are absent or are unwilling to act as chairperson of a meeting, the Board members at the meeting must choose one of their number to act as chairperson of the meeting.
- (3) The procedure to be followed at a Board meeting must be determined from time to time by the Board.
- (4) The order of business at a Board meeting may be determined by the Board members at the meeting.
- (5) A member or other person who is not a Board member may attend a Board meeting if invited to do so by the Board.
- (6) A person invited under subrule (5) to attend a Board meeting —
  - (a) has no right to any agenda, minutes or other document circulated at the meeting; and
  - (b) must not comment at the meeting about any matter under discussion unless invited by the Board to do so; and
  - (c) cannot vote on any matter that is to be decided at the meeting.

## **46 Use of technology to be present at Board meetings**

- (1) Subject to subrule (3) the presence of a Board member at a Board meeting need not be by attendance in person but may be by that Board member and each other Board member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.
- (2) A member who participates in a Board meeting as allowed under subrule (1) is taken to be present at the meeting and, if the member votes at the meeting, the member is taken to have voted in person.
- (3) Participation in a Board meeting under subrule (1) is subject to the availability of appropriate communications technology at the physical location at which the meeting is being held.
- (4) This rule does not oblige the Association to acquire equipment, or to provide any Board member with equipment in order to enable participation in a Board meeting under subrule (1).

## **47 Quorum for Board meetings**

- (1) A quorum for Board meetings shall be:
  - (a) If the number of members appointed to the Board is an even number, one half of that number plus one; or
  - (b) If the number of members appointed to the Board is an odd number, the next whole number above one half of that number; or

- (c) Five members

whichever number is the least,

- (2) Subject to rule 40(4), no business is to be conducted at a Board meeting unless a quorum is present.
- (3) If a quorum is not present within 30 minutes after the notified commencement time of a Board meeting —
- (a) in the case of a special meeting — the meeting lapses; or
- (b) otherwise, the meeting is adjourned to the same time, day and place in the following week.
- (4) If —
- (a) a quorum is not present within 30 minutes after the commencement time of a Board meeting held under subrule (3)(b); and
- (b) at least 2 Board members are present at the meeting,
- those members present are taken to constitute a quorum.

## **48 Voting at Board meetings**

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

## **49 Minutes of Board meetings**

- (1) The Board must ensure that minutes are taken and kept of each Board meeting.
- (2) The minutes must record the following —
- (a) the names of the Board members present at the meeting;
- (b) the name of any person attending the meeting under rule 45(5);
- (c) the business considered at the meeting;
- (d) any motion on which a vote is taken at the meeting and the result of the vote.
- (3) The minutes of a Board meeting must be entered in the Association's minute book or other repository approved by the Board within 30 days after the minutes being ratified by a subsequent meeting.



- (4) The chairperson must ensure that the minutes of a Board meeting are reviewed and signed as correct by —
  - (a) the chairperson of the meeting; or
  - (b) the chairperson of the next Board meeting.
- (5) When the minutes of a Board meeting have been signed as correct they are, until the contrary is proved, evidence that —
  - (a) the meeting to which the minutes relate was duly convened and held; and
  - (b) the matters recorded as having taken place at the meeting took place as recorded; and
  - (c) any appointment purportedly made at the meeting was validly made.

## **Division 5 — Subcommittees and subsidiary offices**

### **50 Subcommittees and subsidiary offices**

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

### **51 Delegation to subcommittees and holders of subsidiary offices**

- (1) In this rule —

***non-delegable duty*** means a duty imposed on the Board by the Act or another written law.
- (2) The Board 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 Board other than —
  - (a) the power to delegate; and
  - (b) a non-delegable duty.
- (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.

- (4) The delegation may be made subject to any conditions, qualifications, limitations or exceptions that the Board specifies in the document by which the delegation is made.
- (5) The delegation does not prevent the Board from exercising or performing at any time the power or duty delegated.
- (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 Board.
- (7) The Board may, in writing, amend or revoke the delegation.

## **PART 6 — GENERAL MEETINGS OF ASSOCIATION**

### **52 Annual general meeting**

- (1) The Board must determine the date, time and place of the annual general meeting.
- (2) If it is proposed to hold the annual general meeting more than 6 months after the end of the Association's financial year, the secretary must apply to the Commissioner for permission under section 50(3)(b) of the Act within 4 months after the end of the financial year.
- (3) The ordinary business of the annual general meeting is as follows —
  - (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;
  - (b) to receive and consider —
    - (i) the Board's annual report on the Association's activities during the preceding financial year; and
    - (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
    - (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;
    - (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;
  - (c) to elect members to vacant positions on the Board;
  - (d) if applicable, to appoint or remove a reviewer or auditor of the Association in accordance with the Act;
  - (e) to confirm or vary the entrance fees, subscriptions and other amounts (if any) to be paid by members.
- (4) Any other business of which notice has been given in accordance with these rules may be conducted at the annual general meeting.

## **53 Special general meetings**

- (1) The Board may convene a special general meeting.
- (2) The Board must convene a special general meeting if at least 20% of the members require a special general meeting to be convened.
- (3) The members requiring a special general meeting to be convened must —
  - (a) make the requirement by written notice given to the secretary; and
  - (b) state in the notice the business to be considered at the meeting; and
  - (c) each sign the notice.
- (4) The special general meeting must be convened within 28 days after notice is given under subrule (3)(a).
- (5) If the Board 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.
- (6) A special general meeting convened by members under subrule (5) —
  - (a) must be held within 3 months after the date the original requirement was made; and
  - (b) may only consider the business stated in the notice by which the requirement was made.
- (7) The Association must reimburse any reasonable expenses incurred by the members convening a special general meeting under subrule (5).

## **54 Notice of general meetings**

- (1) The secretary or, in the case of a special general meeting convened under rule 53(5), the members convening the meeting, must give to each member —
  - (a) at least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting; or
  - (b) at least 14 days' notice of a general meeting in any other case.
- (2) The notice must —
  - (a) specify the date, time and place of the meeting; and
  - (b) indicate the general nature of each item of business to be considered at the meeting; and
  - (c) if the meeting is the annual general meeting, include the names of the members who have nominated for election to the committee under rule 34(2); and
  - (d) if a special resolution is proposed —
    - (i) set out the wording of the proposed resolution as required by section 51(4) of the Act; and
    - (ii) state that the resolution is intended to be proposed as a special resolution; and
    - (iii) comply with rule 55(7).

## **55 Proxies**

- (1) Subject to subrule (2), an ordinary member, corporate member or life member may appoint the chairperson or an individual who is an ordinary member as his or her proxy to vote and speak on his or her behalf at a general meeting.
- (2) An ordinary member or life member may be appointed as proxy for not more than 5 other members.
- (3) Subject to subrule (5) there is no restriction on the number of members for whom the chairperson may be appointed as proxy.
- (4) The appointment of a proxy must be in writing and signed by the member making the appointment.
- (5) The member appointing the proxy:
  - (i) where the proxy is an ordinary member, may give specific directions as to how the proxy is to vote on his or her behalf.
  - (ii) where the proxy is the chairperson, must give specific directions as to how the proxy is to vote on his or her behalf.
- (6) If no instructions are given to the proxy as provided in subrule (5)(i), the proxy may vote on behalf of the member in any matter as the proxy sees fit.
- (7) If the Board has approved a form for the appointment of a proxy, the member may use that form or any other form —
  - (a) that clearly identifies the person appointed as the member's proxy; and
  - (b) that has been signed by the member.
- (8) Notice of a general meeting given to an ordinary member, corporate member or life member under rule 54 must —
  - (a) state that the member may appoint an individual who is an ordinary member as a proxy for the meeting; and
  - (b) include a copy of any form that the committee has approved for the appointment of a proxy.
- (9) A form appointing a proxy must be given to the secretary before the commencement of the general meeting for which the proxy is appointed.
- (10) 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.

## **56 Use of technology to be present at general meetings**

- (1) The presence of a member at a general meeting need not be by attendance in person but may be by that member and each other member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

- (2) A member who participates in a general meeting as allowed under subrule (1) is taken to be present at the meeting and, if the member votes at the meeting, the member is taken to have voted in person.
- (3) Participation in a general meeting under subrule (1) is subject to the availability of appropriate communications technology at the physical location at which the meeting is being held.
- (4) This rule does not oblige the Association to acquire equipment, or to provide any member with equipment in order to enable participation in a general meeting under subrule (1).

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

- (1) The chairperson or, in the chairperson's absence, the deputy chairperson must preside as chairperson of each general meeting.
- (2) If the chairperson and deputy chairperson are absent or are unwilling to act as chairperson of a general meeting, the Board members present at the meeting must choose one of them to act as chairperson of the meeting.
- (3) A quorum for a general meeting shall be 12 persons who are ordinary members, corporate members or life members.
- (4) No business is to be conducted at a general meeting unless a quorum is present.
- (5) If a quorum is not present within 30 minutes after the notified commencement time of a general meeting —
  - (a) in the case of a special general meeting — the meeting lapses; or
  - (b) in the case of the annual general meeting — the meeting is adjourned to —
    - (i) the same time and day in the following week; and
    - (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.
- (6) If —
  - (a) a quorum is not present within 30 minutes after the commencement time of an annual general meeting held under subrule (5)(b); and
  - (b) at least 2 ordinary members are present at the meeting, those members present are taken to constitute a quorum.

## **58 Adjournment of general meeting**

- (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.
- (2) Without limiting subrule (1), a meeting may be adjourned —
  - (a) if there is insufficient time to deal with the business at hand; or
  - (b) to give the members more time to consider an item of business.

- (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.
- (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 54.

## **59 Voting at general meeting**

- (1) On any question arising at a general meeting —
  - (a) subject to subrule (6), each ordinary member, corporate member and life member has one vote unless the member may also vote on behalf of a body corporate under subrule (2); and
  - (b) ordinary members may vote personally or by proxy.
- (2) A corporate member 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.
- (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.
- (4) The appointment has effect until —
  - (a) the end of any general meeting to which the appointment applies; or
  - (b) the appointment is revoked by the body corporate and written notice of the revocation is given to the secretary.
- (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.
- (6) If votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.
- (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.
- (8) For a person to be eligible to vote at a general meeting as an ordinary member or life member, or on behalf of a corporate member under subrule (2), the person —
  - (a) must have been an ordinary member or life member at the time notice of the meeting was given under rule 54; and
  - (b) must have paid any fee or other money payable to the Association by the member.

## **60 When special resolutions are required**

- (1) A special resolution is required if it is proposed at a general meeting —
  - (a) to affiliate the Association with another body; or

- (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; or
  - (c) to amend the rules of the Association in accordance with rule 75; or
  - (d) to wind up the Association.
- (2) Subrule (1) does not limit the matters in relation to which a special resolution may be proposed.

## **61 Determining whether resolution carried**

- (1) In this rule —  
***poll*** means the process of voting in relation to a matter that is conducted in writing.
- (2) Subject to subrule (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 —
- (a) carried; or
  - (b) carried unanimously; or
  - (c) carried by a particular majority; or
  - (d) lost.
- (3) If the resolution is a special resolution, the declaration under subrule (2) must identify the resolution as a special resolution.
- (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 —
- (a) the poll must be taken at the meeting in the manner determined by the chairperson;
  - (b) the chairperson must declare the determination of the resolution on the basis of the poll.
- (5) If a poll is demanded on the election of the chairperson or on a question of an adjournment, the poll must be taken immediately.
- (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.
- (7) A declaration under subrule (2) or (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.

## **62 Minutes of general meeting**

- (1) The secretary, or a person authorised by the Board from time to time, must take and keep minutes of each general meeting.
- (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.

- (3) In addition, the minutes of each annual general meeting must record —
  - (a) the names of the ordinary members attending the meeting; and
  - (b) any proxy forms given to the chairperson of the meeting or other person under subrule 55(1); and
  - (c) the financial statements or financial report presented at the meeting, as referred to in rule 52(3)(b)(ii) or (iii); and
  - (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 52(3)(b)(iv).
- (4) The minutes of a general meeting must be entered in the Association's minute book within 30 days after the meeting is held.
- (5) The chairperson must ensure that the minutes of a general meeting are reviewed and signed as correct by —
  - (a) the chairperson of the meeting; or
  - (b) the chairperson of the next general meeting.
- (6) When the minutes of a general meeting have been signed as correct they are, in the absence of evidence to the contrary, taken to be proof that —
  - (a) the meeting to which the minutes relate was duly convened and held; and
  - (b) the matters recorded as having taken place at the meeting took place as recorded; and
  - (c) any election or appointment purportedly made at the meeting was validly made.

## **PART 7 — FINANCIAL MATTERS**

### **63 Source of funds**

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

### **64 Control of funds**

- (1) The Association must open an account 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.
- (2) Subject to any restrictions imposed at a general meeting, the Board may approve expenditure on behalf of the Association.
- (3) The Board may authorise the treasurer or another person to expend funds on behalf of the Association up to a specified limit without requiring approval from the Board for each item on which the funds are expended.



- (4) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the Association must be signed by —
  - (a) Two Board members; or
  - (b) one Board member and a person authorised by the Board.
- (5) All funds of the Association must be deposited into the Association's account within 5 working days after their receipt.

## **65 Financial statements and financial reports**

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

## **PART 8 — GENERAL MATTERS**

### **66 By-laws**

- (1) The Association may, by resolution at a general meeting, make, amend or revoke by-laws.
- (2) By-laws may —
  - (a) provide for the rights and obligations that apply to any classes of associate membership approved under rule 10(2); and
  - (b) impose restrictions on the Board's powers, including the power to dispose of the Association's assets; and
  - (c) impose requirements relating to the financial reporting and financial accountability of the Association and the auditing of the Association's accounts; and
  - (d) provide for any other matter the Association considers necessary or convenient to be dealt with in the by-laws.

- (3) A by-law is of no effect to the extent that it is inconsistent with the Act, the regulations or these rules.
- (4) Without limiting subrule (3), a by-law made for the purposes of subrule (2)(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.
- (5) At the request of a member, the Association must make a copy of the by-laws available for inspection by the member.

## **67 Executing documents and common seal**

- (1) The Association may execute a document without using a common seal if the document is signed by —
  - (a) 2 Board members; or
  - (b) one Board member and a person authorised by the Board.
- (2) If the Association has a common seal —
  - (a) the name of the Association must appear in legible characters on the common seal; and
  - (b) a document may only be sealed with the common seal by the authority of the Board and in the presence of —
    - (i) two Board members; or
    - (ii) one Board member and a person authorised by the Board, and each of them must sign the document to attest that the document was sealed in their presence.
- (3) The secretary must make a written record of each use of the common seal.
- (4) The common seal must be kept in the custody of the secretary or another Board member or person authorised by the Board.

## **68 Giving notices to members**

- (1) In this rule —  
***recorded means*** recorded in the register of members.
- (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 —
  - (a) delivered by hand to the recorded address of the member; or
  - (b) sent by prepaid post to the recorded postal address of the member; or
  - (c) sent by facsimile or other electronic transmission to an appropriate recorded number or recorded electronic address of the member.

## **69 Custody of books and securities**

- (1) Subject to subrule (2), the books and any securities of the Association must be kept in the secretary's custody or under the secretary's control.

- (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.
- (3) Subrules (1) and (2) have effect except as otherwise decided by the Board.
- (4) Subject to section 67 of the Act, the books of the Association must be retained for
  - (a) the period of time listed in the Association's Retention and Disposal Schedule for the document type concerned; or
  - (b) if the document type is not listed in the Retention and Disposal Schedule, a period of 7 years.

## **70 Record of office holders**

The record of Board 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.

## **71 Inspection of records and documents**

- (1) Subrule (2) applies to a member who wants to inspect —
  - (a) the register of members under section 54(1) of the Act; or
  - (b) the record of the names and addresses of Board members, and other persons authorised to act on behalf of the Association, under section 58(3) of the Act; or
  - (c) any other record or document of the association.
- (2) The member must contact the secretary to make the necessary arrangements for the inspection.
- (3) The inspection must be free of charge.
- (4) If the member wants to inspect a document that records the minutes of a Board meeting, the right to inspect that document is subject to any decision the Board has made about minutes of Board meetings generally, or the minutes of a specific Board meeting, being available for inspection by members.
- (5) The member may make a copy of or take an extract from a record or document referred to in subrule (1)(c) but does not have a right to remove the record or document for that purpose.
- (6) The member must not use or disclose information in a record or document referred to in subrule (1)(c) except for a purpose —
  - (a) that is directly connected with the affairs of the Association; or
  - (b) that is related to complying with a requirement of the Act.

## 72 Publication by Board members of statements about Association business

A Board member other than the chairperson must not purport to represent the opinion or position of the Association in relation to any matter unless —

- (a) the Board member has been authorised to do so at a Board meeting; and
- (b) the authority given to the Board member has been recorded in the minutes of the Board meeting at which it was given; or
- (c) the Board member is acting under a general delegation made by the Board.

## 73 Distribution of surplus property on cancellation of incorporation or winding up

- (1) In this rule —  
**surplus property**, in relation to the Association, means property remaining after satisfaction of —
  - (a) the debts and liabilities of the Association; and
  - (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.
- (2) Subject to rule 74, 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 entities mentioned in section 24(1) of the Act.

## 74 Effect of registration as a deductible gift recipient

If the Association is or becomes a deductible gift recipient registered with the Australian Charities and Not-for-profits Commission and is wound up or its endorsement as a deductible gift recipient is revoked (whichever occurs first), any surplus of the following assets must be transferred to another organisation with similar objects, which is charitable at law, and to which income tax deductible gifts can be made:

- (a) Gifts of money or property for the principal purpose of the organisation;
- (b) Contributions made in relation to an eligible fundraising event held for the principal purpose of the organisation;
- (c) Money received by the organisation because of such gifts and contributions.

## 75 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.

## PART 9 – TRANSITIONAL ARRANGEMENTS

### 76 Purpose and definitions

- (1) The rules in this part provide for the ongoing management of the Association prior to the appointment of the first Board, and sets out the process by which the first Board is to be appointed.
- (2) In this part  
***transition committee*** means the committee elected by the Association to plan and manage the implementation of these rules including the establishment of the inaugural Board.  
***interim Board*** means the committee authorised to exercise the functions of the Board under rule 78.  
***inaugural Board*** means the first Board appointed after these rules come into operation.

### 77 Duration of arrangements

The rules in this part shall cease to have effect on appointment of the inaugural Board by a general meeting of the association.

### 78 Transition Committee to be Interim Board

- (1) The transition committee of the Association will have the authority to carry out all of the functions conferred on the Board by these rules.
- (2) The transition committee consists of six members elected by the Association at a general meeting, plus an independent chairperson.
- (3) The independent chairperson must be a person who is not a member of the Association or any organisation affiliated with the Association.
- (4) The independent chairperson will be appointed by members of the Association at a general meeting.

### 79 Priorities of the Interim Board

The interim Board shall, at the earliest practical opportunity:

- (1) Determine the classes of membership of the Association in accordance with rule 10.
- (2) Invite nominations for positions on the inaugural Board in accordance with rule 34, except that the reference to ‘annual general meeting’ in rule 34(1) shall be taken to refer to a special general meeting convened for the purpose of electing members to the inaugural Board.
- (3) Determine whether nominations received for positions on the inaugural Board satisfy the criteria for the category of position sought.
- (4) Convene a special general meeting of the Association to elect the inaugural Board.

## **80 Members of the Interim Board may nominate for positions**

Any members of the interim Board may nominate for a position on the inaugural Board.

## **81 Office holders of the interim Board**

At its first meeting, the interim Board must select from among its members persons to act in the capacity of secretary and treasurer to perform the functions of those offices as set out in these rules.

## **82 Chairperson to preside**

- (1) The chairperson appointed under subrule 78(4) shall preside at all meetings of the interim Board, and at the special general meeting convened under rule 79(4).
- (2) In the event that the chairperson is unable to preside over any meeting, the interim Board or the special general meeting as the case may be, shall by resolution appoint another member of the interim Board to preside at the meeting.

## **83 Quorum for interim Board**

The quorum for a meeting of the interim Board shall be four members.

## **84 Term of office of members of the inaugural Board**

- (1) Members elected to the inaugural Board will be elected for terms of either two years or one year.
- (2) The number of two year terms available for each of the categories of Board member shall be one half of the maximum specified for each category in subrule 29(1)
- (3) If an election under subrule 35(4) is required in the course of the selection of members of the inaugural Board, the term of office for the persons elected shall be determined as follows:
  - (a) The successful nominees shall first be ranked in order of the number of votes received.
  - (b) In the event that two or more successful nominees have received an equal number of votes, their ranking shall be determined by the drawing of lots.
  - (c) The available two year terms for each category shall be allocated to the highest ranked nominees;
  - (d) The remaining successful nominees shall be appointed for one year terms.
- (4) If rule 35 (4) does not require an election to be conducted, the successful nominees shall be ranked by the drawing of lots and the process set out subrules (3)(c) and (d) of this rule followed to determine their terms of office.

## PART 10 – TAX DEDUCTIBLE DONATION FUND

### 85 Esperance Community Arts Fund

- (1) The Association must establish and maintain a public tax deductible donation fund to be called the Esperance Community Arts Fund for the specific purpose of supporting the community arts objects and purposes of the Association.
- (2) Subject to rule 85(3), the Board must establish a subcommittee titled the Esperance Community Arts Fund Management Committee and may appoint, remove or make provision for the appointment and removal of members of that Committee in accordance with rule 86.
- (3) The Esperance Community Arts Fund Management Committee shall be comprised of at least three persons, the majority of whom must be responsible persons by virtue of their professional standing or tenure of public office or their position in the community.
- (4) The Esperance Community Arts Fund Management Committee will be responsible for ensuring that the Fund complies with all requirements and directions relating to deductible gift funds, and for approving payments from the Fund.
- (5) In order to comply with rule 85(3), the Board may appoint a person who is not a member of the Association to the Esperance Community Arts Fund Management Committee.
- (6) The Association must maintain a separate bank account for the Fund. Only members of the Esperance Community Arts Fund Management Committee may be signatories to the Fund's bank account.
- (7) Donations received by the Association will be deposited into the Fund, and these monies will be kept separate from other funds of the Association and will only be used to further the principal purpose of the Association.
- (8) Investment of monies in the Fund will be made in accordance with guidelines for public funds as specified by the Australian Taxation Office.
- (9) The Association must invite members of the public to contribute to the Fund.
- (10) No monies or assets in the Fund will be distributed to members or office bearers of the Association, except as reimbursement for out-of-pocket expenses incurred on behalf of the Fund or proper remuneration for administrative or artistic services.
- (11) Receipts for gifts to the Fund must state:
  - (a) The name of the Fund and that the receipt is for a gift made to the Fund;
  - (b) The Australian Business Number of the Association;
  - (c) The amount of the gift;
  - (d) Any other matter required to be included pursuant to the *Income Tax Assessment Act 1997*.

- (12) The department responsible for the administration of the Register of Cultural Organisations will be notified of any proposed amendments or alterations to the provisions of the Fund, to assess the effect of any amendments on the Fund's continuing Gift Deductible Recipient status.
- (13) The Association must provide to the Department responsible for the administration of the register of Cultural Organisations statistical information on the gifts made to the Fund every 6 months.
- (14) The Association must comply with any rules that the Treasury Minister or the Minister for the Arts makes to ensure that gifts made to the Fund will only be used for the Association's principal purpose.

## **86 Winding up of Fund**

If upon the winding-up or dissolution of the Fund listed on the Register of Cultural Organisations, or its endorsement as a deductible gift recipient is revoked, there remains after satisfaction of all its debts and liabilities, any property or funds, the property or funds shall not be paid to or distributed among the members of the Association, but shall be given or transferred to some other fund, authority or institution having objects similar to the objects of the Fund, and whose rules shall prohibit the distribution of its or their income among its or their members, such fund, authority or institution to be eligible for tax deductibility of donations under Subdivision 30-B, section 30-100, of the Income Tax Assessment Act 1997.

*[Part 10 added at AGM 26 June 2019]*