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aged rights advocacy service inc.

# Rules

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of Aged Rights Advocacy Service (S.A.)  
Incorporated

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# Rules of Aged Rights Advocacy Service (S.A.) Incorporated

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# Agreed terms

## 1. Name

The name of the incorporated association is Aged Rights Advocacy Service (S.A.) Incorporated (in these Rules called the **Association**).

## 2. Defined terms and interpretation

### 2.1 Defined terms

In these Rules, unless the contrary intention appears:

**Act** means the *Associations Incorporation Act 1985* (SA).

**Associate** has the same meaning as in the Act.

**Associate Member** means a person who is registered as an Associate Member of the Association.

**Board** means the board of management of the Association.

**Board Member** means a member of the Board.

**Chief Executive** means a chief executive officer appointed by the Board under Rule 8.1.

**Commission** has the same meaning as in the Act.

**Financial Year** means a financial year of the Association, being the period from 1 July to 30 June inclusive, or such other period as determined by the Board from time to time.

**General Meeting** means a general meeting of Members convened in accordance with these Rules.

**Member** means a member of the Association.

**Ordinary Member** means a person who is registered as an Ordinary Member of the Association.

**Ordinary Board Member** means a Board Member who is not an officer of the Association.

**Ordinary Resolution** means a resolution passed by a simple majority of Members present and entitled to vote.

**Regulations** means regulations under the Act.

**Special Resolution** means a special resolution as defined in the Act.

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth).

### 2.2 Interpretation

In these Rules, unless the contrary intention appears:

- (a) a reference to any document is a reference to that document as varied, novated or replaced from time to time;

- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes all genders;
- (d) the use of the word 'including' does not limit what else might be included;
- (e) a reference to a thing includes all or any part of it;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a person or entity includes a natural person, a partnership, corporation, trust, association, unincorporated body, authority or other entity;
- (h) a reference to a party includes that party's legal personal representatives, successors and permitted assigns;
- (i) a term which purports to bind or benefit two or more persons binds or benefits them jointly and severally; and
- (j) a reference to a statute, ordinance, code or other law includes regulations and other instruments issued under it and consolidations, amendments, re-enactments or replacements of any of them.

### **2.3 Resolutions**

Any reference to a 'resolution' in a clause of these Rules shall be read as a reference to an Ordinary Resolution, unless a different type of resolution is required for the purposes of that clause (either by these Rules or the Act).

### **2.4 Questions of interpretation**

The Board will be the sole authority for the interpretation of these Rules and of any by-laws which the Board is authorised and empowered to make. The decision of the Board upon any question of interpretation or of any matter affecting the Association and not provided for by these Rules or the Act, will be final and conclusive.

## **3. Objects and powers**

### **3.1 Mission**

- (a) The Mission of the Association is to increase older people's control over goods, services and quality of life, and their sense of empowerment and of being valued as individuals and citizens of Australia, through an advocacy process.
- (b) The Association acts in the interests of older people to safeguard, uphold and promote their rights as citizens of Australia. The Association strives to work in an inclusive manner, and all its activities encompass strategies appropriate to the special linguistic, cultural, physical and intellectual requirements of its client group.

### **3.2 Objects**

The objects of the Association are as follows:

- (a) Provide a service to represent and promote the interests of the following older people (or their representatives) in South Australia:
  - (i) Residents and potential residents of Commonwealth-subsidised residential care facilities, their carers and representatives;
  - (ii) Frail older people living in the community who receive or are eligible for Community Care packages, and their carers;
  - (iii) Older people who are at risk of or experiencing abuse; and
  - (iv) Other groups of older people who are in need of services of a similar nature.

- (b) Provide information and advice to the above groups of older people (or their representatives) about their rights and responsibilities.
- (c) Support the above groups of older people or their representatives through advocacy processes.
- (d) Promote government and community awareness of the rights of older people
- (e) Do all such lawful things as may be incidental or conducive to the attainment of the above objects.

### **3.3 Powers**

For the purpose of carrying out its objects, the Association will have all the powers conferred by section 25 of the Act.

### **3.4 Application of Funds**

- (a) The assets and income of the Association must be applied solely in furtherance of its objects.
- (b) No assets or income may be applied or distributed (directly or indirectly) to any Member except for:
  - (i) payments made to a Member as genuine compensation for goods or services provided to, or reasonable expenses incurred on behalf of, the Association; and
  - (ii) payments made to a Member in accordance with clauses 3.2 and 3.4(a), where that Member is a charitable fund, authority or institution:
    - (A) which is not carried on for the profit or gain of its members; and
    - (B) which has objects that are similar to the objects of the Association.
- (c) The Association must not make a payment from its income or capital, or dispose of any of its assets *in specie*, to any Associate of a Member except for:
  - (i) payments or dispositions that are connected to activities carried on by the Association in accordance or consistently with its objects; or
  - (ii) payments or dispositions approved by the Commission.

## **4. Rules**

- (a) These Rules will bind the Association and every Member to the same extent as if they had signed them, and agreed to be bound by all of their provisions.
- (b) Subject to clause 4(c), these Rules may be altered (including an alteration to the name of the Association), or be rescinded and replaced by substituted rules, by a Special Resolution of the Ordinary Members.
- (c) If, in the opinion of the Board, it is necessary to amend these Rules to achieve or maintain an exemption wholly or partially from any form of State, Territory or Commonwealth tax to which the Association would otherwise be liable, the Board may make the amendments that it considers necessary for that purpose.
- (d) Any alteration will be registered as required by the Act. The Board must also ensure that the Commissioner of Taxation and/or Australian Charities and Not-For-Profits Commission are notified (if required).

## **5. Membership**

### **5.1 Classes of membership**

- (a) The Association consists of various classes of Members, including:

- (i) Ordinary Members;
  - (ii) Associate Members; and.
  - (iii) Any additional classes of membership of the Association as determined by the Board in its absolute discretion from time to time, including the qualifications for admission to any such additional class and the rights attached to being a Member in any such additional class.
- (b) Only Ordinary Members may vote at a General Meeting.
  - (c) Associate Members will receive notice of, and may attend, General Meetings, but may not vote at a General Meeting.
  - (d) Any additional classes of Members as determined from time to time will receive notice of, and may attend, General Meetings, but may not vote at a General Meeting, unless empowered to do so upon the creation of that class under Rule 5.1(a)(iii)
  - (e) Any additional classes of Members as determined from time to time will receive notice of, and may attend, General Meetings, but may not vote at a General Meeting The Members of the Association are:
    - (i) the persons who were Members at the date of adoption of these Rules; and
    - (ii) any other persons whom, or which, the Board admits to membership in accordance with these Rules.
  - (f) Applications for membership of the Association must:
    - (i) be made by any method approved by the Board in its absolute discretion as specified by the Association to applicants from time to time;
    - (ii) include payment of the applicant's entrance fee and first annual subscription (if applicable);
    - (iii) include any information concerning eligibility for membership requested by the Association; and
    - (iv) be in a form approved by the Board in its absolute discretion.

## **5.2 Initial Member**

- (a) The initial Member of the Association is COTA SA (ABN 28 426 218 581) being the only organisation which was a Member as at the date of adoption of these Rules, and is an Ordinary Member.
- (b) That initial Member will not be liable to pay any entrance fee, but will be liable for annual subscriptions (if applicable under clause 5.6).

## **5.3 Additional Members**

- (a) A person who is not a Member as at the date of adoption of these Rules must not be admitted to membership unless:
  - (i) they apply for membership in accordance with rule 5.3(b); and
  - (ii) the admission as a Member is approved by the Board.
- (b) An application of a person for membership of the Association must:
  - (i) be made in writing in the form set out in Annexure 1; and
  - (ii) be lodged with the Secretary.
- (c) As soon as practicable after the receipt of an application, the Secretary must refer the application to the Board.
- (d) The Board must then determine whether to approve or reject the application.
- (e) If the Board approves an application for membership, the Secretary must, as soon as practicable:

- (i) notify the applicant in writing of the approval for membership; and
  - (ii) request payment within 28 days after receipt of the notification of the sum payable under these Rules as the entrance fee and (if applicable) the first year's annual subscription.
- (f) The Secretary must, within 28 days after receipt of the amounts referred to in rule 5.3(e), enter the applicant's name in the register of Members.
- (g) An applicant for membership becomes a Member and is entitled to exercise the rights of membership when their name is entered in the register of Members.
- (h) If the Board rejects an application, the Board must, as soon as practicable, notify the applicant in writing that the application has been rejected.
- (i) The Board does not have to give any reason for rejecting an application for membership.
- (j) A right, privilege, or obligation of a person by reason of membership of the Association:
- (i) is not capable of being transferred or transmitted to another person; and
  - (ii) terminates upon the cessation of membership whether by death or resignation or otherwise.

#### **5.4 Ordinary Member**

- (a) Any person who in the opinion of the Board supports the objects of the Association may be admitted by the Board as an Ordinary Member. Individuals, organisations, associations, institutions, clubs, corporate entities and similar bodies are eligible to be admitted as Ordinary Members.
- (b) Any person who in the opinion of the Board is reasonably likely to have any conflict of interest with the Association will generally not be eligible to be admitted as an Ordinary Member, unless in the opinion of the Board exceptional circumstances apply and that person is appropriate for admission as an Ordinary Member rather than an Associate Member.
- (c) As a guide only, any person who provides aged care services that may directly or indirectly bring them into conflict with the advocacy support services provided by the Association to older people or their family and friends, including any person who:
- (i) is an aged care provider;
  - (ii) provides home care or services; or
  - (iii) is an operator of retirement villages
  - (iv) is an agency, employee or agent of the Commonwealth or a state/territory government, except in an individual capacity
- will generally be considered to have a conflict of interest with the Association and will not be eligible to be admitted as an Ordinary Member, and instead be appropriate for admission as an Associate Member. The above examples are not intended to be exhaustive, and the Board may determine who in the opinion of the Board is reasonably likely to have any conflict of interest with the Association.
- (d) Any person:
- (i) who is employed by, or associated with, a person who in the opinion of the Board is reasonably likely to have any conflict of interest with the Association, including an Associate Member, and
  - (ii) who in the opinion of the Board is appropriate despite that employment or association, may be eligible to be admitted as an Ordinary Member, rather than an Associate Member.

#### **5.5 Associate Member**

Any person (including any individual natural person) who in the opinion of the Board supports the objects of the Association, and who in the opinion of the Board is appropriate for admission as an

Associate Member rather than an Ordinary Member, may be admitted by the Board as an Associate Member. Generally a person who in the opinion of the Board is reasonably likely to have any conflict of interest with the Association will only be appropriate for admission as an Associate Member rather than an Ordinary Member.

## **5.6 Fees**

- (a) The entrance fee will be such amount (if any) as is set by the Board from time to time.
- (b) The annual subscription will be such amount (if any) as is set by the Board from time to time and will be payable in advance on or before the start of each Financial Year or at such other time as the Board determines.
- (c) The Board may determine different entrance fees and annual subscription fees for different classes of Members.
- (d) The Board may waive fees for different classes of Members and for individual Members, in its absolute discretion from time to time.

## **5.7 Register of members**

- (a) The Secretary must keep and maintain a register of Members containing:
  - (i) the name and address of each Member;
  - (ii) the class of membership applicable to each Member;
  - (iii) the date on which each Member's name was entered in the register; and
  - (iv) the date on which each Member's name was removed from the register.
- (b) A Member may apply to the public officer for access to the register. If the public officer is satisfied upon reasonable grounds that the application is not made for an unlawful or improper purpose or that disclosure will not adversely impact the privacy of others, then the public officer will make the register (except for the address and other contact details of Members) available for inspection, free of charge. The public officer may apply to the Board for guidance about making the register available to a Member and must follow or implement any conditions imposed by the Board (which conditions may not be inconsistent with this Rule 5.7).
- (c) Subject to the Act, a Member may not make a copy of entries in the register, but may record the name only of a member.

## **5.8 Ceasing membership**

- (a) A Member (being a natural person) ceases to be a Member on their death.
- (b) A Member of the Association who has paid all moneys due and payable by a Member to the Association may resign from the Association by giving one month's notice in writing to the Secretary of their intention to resign. Such resignation shall take effect on the expiry of that period.
- (c) The Secretary must record in the register of Members the date on which a Member ceased to be a Member.

## **5.9 Discipline, suspension and expulsion of Members**

- (a) Subject to these Rules, if the Board is of the opinion that a Member has refused or neglected to comply with these Rules, or has been guilty of conduct unbecoming a Member or prejudicial to the interests of the Association, the Board may by resolution:
  - (i) suspend that Member from membership of the Association for a specified period; or
  - (ii) expel that Member from the Association.



- (b) A resolution of the Board under rule 5.9(a) does not take effect unless:
  - (i) at a meeting held in accordance with rule 5.9(c), the Board confirms the resolution; and
  - (ii) if the Member exercises a right of appeal to the Association under this rule, the Association confirms the resolution in accordance with this rule.
- (c) A meeting of the Board to confirm or revoke a resolution passed under rule 5.9(a) must be held not earlier than 14 days, and not later than 28 days, after notice has been given to the Member in accordance with rule 5.9(d).
- (d) For the purposes of giving notice in accordance with rule 5.9(c) the Secretary must, as soon as practicable, cause to be given to the Member a written notice:
  - (i) setting out the resolution of the Board and the grounds on which it is based;
  - (ii) stating that the Member, and their representative (which representative may not be a legal practitioner or a legally qualified person without the Board's prior written approval), may address the Board at a meeting to be held not earlier than 14 days and not later than 28 days after the notice has been given to that Member;
  - (iii) stating the date, place and time of that meeting;
  - (iv) informing the Member that they may do one or both of the following:
    - (A) attend that meeting;
    - (B) give to the Board before the date of that meeting a written statement seeking the revocation of the resolution; and
  - (v) informing the Member that, if at that meeting, the Board confirms the resolution, they may, not later than 48 hours after that meeting, give the Secretary a notice to the effect that they wish to appeal to the Association in General Meeting against the resolution.
- (e) At a meeting of the committee to confirm or revoke a resolution passed under rule 5.9(a) the Board must:
  - (i) give the Member, or their representative, an opportunity to be heard;
  - (ii) give due consideration to any written statement submitted by the Member; and
  - (iii) determine by resolution whether to confirm or to revoke the resolution.
- (f) If at the meeting of the Board, the Board confirms the resolution, the Member may, not later than 48 hours after that meeting, give the Secretary a notice to the effect that they wish to appeal to the Association in General Meeting against the resolution.
- (g) If the Secretary receives a notice under rule 5.9(f) they must notify the Board and the Board must convene a General Meeting of the Association to be held within 21 days after the date on which the Secretary received the notice.
- (h) At a General Meeting of the Association convened under rule 5.9(g):
  - (i) no business other than the question of the appeal may be conducted;
  - (ii) the Board may place before the meeting details of the grounds for the resolution and the reasons for the passing of the resolution;
  - (iii) the Member, or their representative, must be given an opportunity to be heard; and
  - (iv) the Members present must vote by secret ballot on the question whether the resolution should be confirmed or revoked.
- (i) A resolution is confirmed if, at the General Meeting, not less than two-thirds of the Members present (either in person or by proxy) and entitled to vote support the resolution. In any other case, the resolution is revoked.

## **5.10 Disputes and mediation**

- (a) The grievance procedure set out in this rule applies to disputes under these Rules between:
  - (i) a Member and another Member; or
  - (ii) a Member and the Association.
- (b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.
- (c) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.
- (d) The mediator must be:
  - (i) a person chosen by agreement between the parties; or
  - (ii) in the absence of agreement:
    - (A) in the case of a dispute between a Member and another Member, a person appointed by the Board of the Association; or
    - (B) in the case of a dispute between a Member and the Association, a person who is a mediator appointed or employed by the Chair of the Resolution Institute (South Australian Branch).
- (e) A Member of the Association can be a mediator.
- (f) The mediator cannot be a Member who is a party to the dispute.
- (g) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (h) The mediator, in conducting the mediation, must:
  - (i) give the parties to the mediation process every opportunity to be heard;
  - (ii) allow due consideration by all parties of any written statement submitted by any party; and
  - (iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (i) The mediator must not determine the dispute.
- (j) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

## **6. General Meetings**

### **6.1 Annual General Meetings**

- (a) Subject to section 39 of the Act, the Board may determine the date, time and place of the annual General Meeting of the Association.
- (b) The notice convening the annual General Meeting must specify that the meeting is an annual General Meeting.
- (c) The ordinary business of the annual General Meeting will be to:
  - (i) confirm the minutes of the previous annual General Meeting and of any General Meeting held since that meeting;
  - (ii) receive from the Board reports upon the transactions of the Association during the last preceding Financial Year;
  - (iii) elect the Board Members;
  - (iv) consider the appointment of auditors, if required by the Act; and

- (v) consider any other business requiring consideration by the Association.
- (d) The annual General Meeting may conduct any special business of which notice has been given in accordance with these Rules.

## **6.2 Special General Meetings**

- (a) In addition to the annual General Meeting, any other General Meetings may be held in the same year.
- (b) All General Meetings other than the annual General Meeting are special General Meetings.
- (c) The Board may, whenever it thinks fit, convene a special General Meeting of the Association.
- (d) If, but for this rule, more than 15 months would elapse between annual General Meetings, the Board must convene a special General Meeting before the expiration of that period.
- (e) The Board must, on the request in writing of Ordinary Members representing not less than 10 per cent of the total number of Ordinary Members, convene a special General Meeting of the Association.
- (f) The request for a special General Meeting must:
  - (i) state the objects of the meeting;
  - (ii) be signed by the Ordinary Members requesting the meeting; and
  - (iii) be sent to the address of the Secretary.
- (g) If the Board does not cause a special General Meeting to be held within one month after the date on which the request is sent to the address of the Secretary, the Ordinary Members making the request, or any of them, may convene a special General Meeting to be held not later than 3 months after that date.
- (h) If a special General Meeting is convened by Ordinary Members in accordance with this rule, it must be convened in the same manner so far as possible as a meeting convened by the Board and all reasonable expenses incurred in convening the special General Meeting must be refunded by the Association to the persons incurring the expenses.

## **6.3 Special business**

All business that is conducted at a special General Meeting and all business that is conducted at the annual General Meeting, except for business conducted under the rules as ordinary business of the annual General Meeting, is deemed to be special business.

## **6.4 Notice of General Meetings**

- (a) The Secretary must, at least 14 days (or if a Special Resolution has been proposed, at least 21 days) before the date fixed for holding a General Meeting of the Association, cause to be sent to each Member of the Association, a notice stating the place, date and time of the meeting and the nature of the business to be conducted at the meeting.
- (b) No business other than that set out in the notice convening the meeting may be conducted at the meeting.
- (c) An Ordinary Member intending to bring any business before a meeting may notify the Secretary in writing, or by electronic transmission, the nature of that business, and the Secretary must include that business in the notice calling the next General Meeting.

## **6.5 Quorum at General Meetings**

- (a) No item of business may be conducted at a General Meeting unless a quorum of Ordinary Members entitled to vote under these Rules is present at the time when the meeting is considering that item.

- (b) Five Ordinary Members present (either in person or by proxy) and entitled to vote constitute a quorum for the conduct of the business of a General Meeting (unless either there is only one Ordinary Member, when a quorum is that Ordinary Member, or there are less than ten Ordinary Members, when a quorum is a majority of Ordinary Members).
- (c) If, within half an hour after the appointed time for the commencement of a General Meeting, a quorum is not present:
  - (i) in the case of a meeting convened upon the request of Ordinary Members, the meeting must be dissolved; and
  - (ii) in any other case, the meeting will stand adjourned to the same day in the next week at the same time and (unless another place is specified by the chairperson at the time of the adjournment or by written notice to Members given before the day to which the meeting is adjourned) at the same place.
- (d) If at the adjourned meeting the quorum is not present within half an hour after the time appointed for the commencement of the meeting, then three Ordinary Members personally present and entitled to vote will be a quorum.

## **6.6 Chairperson at General Meetings**

- (a) The Chairperson, or in the Chairperson's absence, the Deputy Chairperson, will preside as chairperson at each General Meeting of the Association.
- (b) If the Chairperson and the Deputy Chairperson are absent from a General Meeting, or are unable to preside, the Board Members present must select one of their number to preside as chairperson of the meeting.

## **6.7 Adjournment of meetings**

- (a) The person presiding may, with the consent of a majority of Ordinary Members present at the meeting, adjourn the meeting from time to time and place to place.
- (b) No business may be conducted at an adjourned meeting other than the unfinished business from the meeting that was adjourned.
- (c) If a meeting is adjourned for 14 days or more, notice of the adjourned meeting must be given in accordance with rule 6.4.
- (d) Except as provided in rule 6.7(c), it is not necessary to give notice of an adjournment or of the business to be conducted at an adjourned meeting.

## **6.8 Voting at General Meetings**

- (a) Upon any question arising at a General Meeting of the Association, an Ordinary Member has one vote only.
- (b) All votes must be given personally or by proxy.
- (c) The chairperson of the meeting is not entitled to cast a vote except in the case of an equality of voting on a question, when the chairperson of the meeting is entitled to exercise a casting vote.
- (d) An Ordinary Member is not entitled to vote at a General Meeting unless all moneys due and payable by that Ordinary Member to the Association have been paid, other than the amount of the annual subscription payable in respect of the current Financial Year.

## **6.9 Poll at General Meetings**

- (a) If at a General Meeting a poll on any question is demanded by the chairperson or by not less than three Ordinary Members, it must be taken at that meeting in such manner as the chairperson may direct and the resolution of the poll shall be deemed to be a resolution of the meeting on that question.
- (b) A poll that is demanded on the election of a chairperson or on a question of an adjournment must be taken immediately and a poll that is demanded on any other

question must be taken at such time before the close of the meeting as the chairperson may direct.

#### **6.10 Manner of determining whether resolution carried**

- (a) If a question arising at a General Meeting of the Association is determined on a show of hands:
    - (i) a declaration by the chairperson that a resolution has been:
      - (A) carried;
      - (B) carried unanimously;
      - (C) carried by a particular majority; or
      - (D) lost; and
    - (ii) an entry to that effect in the minute book of the Association,
- is evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

#### **6.11 Corporate Members**

- (a) Any Ordinary Member or Associate Member that is a body corporate may nominate a natural person to represent that Ordinary Member or Associate Member at any General Meeting. The notice of nomination must be sent to the Secretary. The Member may at any time by notice to the Secretary remove the representative, and appoint another natural person in their place.
- (b) Any representative nominated by a body corporate may not attend or vote at a General Meeting (as a representative of that body corporate) in respect of which that body corporate has appointed a proxy under clause 6.12.

#### **6.12 Proxies**

- (a) Each Ordinary Member is entitled to appoint another Ordinary Member as a proxy by notice given to the Secretary no later than 24 hours before the time of the meeting in respect of which the proxy is appointed.
- (b) The notice appointing the proxy must be:
  - (i) for a meeting of the Association convened under Rule 5.9(g), in the form set out in Annexure 2; or
  - (ii) in any other case, in the form set out in Annexure 3.

#### **6.13 Circulating Resolutions**

- (a) If all the Ordinary Members who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a General Meeting held on the day on which the document was last signed by an Ordinary Member.
- (b) For the purposes of clause 6.13(a), two or more identical documents, each of which is signed by one or more Ordinary Members, together constitute one document signed by those Ordinary Members on the days on which they signed the separate documents.
- (c) Any document referred to in this clause may be in the form of an email or other electronic transmission.

## 7. Board

### 7.1 General

- (a) The affairs of the Association will be administered by the Board.
- (b) The Board:
  - (i) must manage and control the funds and other property of the Association;
  - (ii) may, subject to these Rules, the Act and the Regulations, exercise all such powers and functions as may be exercised by the Association other than those powers and functions that are required by these Rules to be exercised by general meetings of the Members; and
  - (iii) subject to these Rules, the Act and the Regulations, has power to perform all such acts and things as appear to the Board to be essential for the proper management of the business and affairs of the Association.
- (c) There will not be less than 6 nor more than 9 Board Members, unless the Association in general meeting by resolution changes the maximum number. The Chief Executive is not to be counted In determining the number of Board Members.
- (d) The Board shall consist of:
  - (i) the Chief Executive and any other officers of the Association; and
  - (ii) any Ordinary Board Members.
- (e) Except as otherwise agreed by the Board, the officers of the Association shall be:
  - (i) a Chairperson;
  - (ii) a Deputy Chairperson;
  - (iii) a Treasurer; and
  - (iv) a Secretary.
- (f) The Board may restructure the officers of the Association from time to time, subject to the Act and the Regulations. If the office of Deputy Chairperson, Treasurer or Secretary is vacant or abolished, the Board must nominate a Board Member or Board Members to undertake the duties of that officer as set out in these Rules
- (g) The Secretary must keep and maintain a register of Board Members containing:
  - (i) the name and address of each Board Member; and
  - (ii) the date on which each Board Member's name was entered in, or removed from, that register.
- (h) The Chief Executive will be an ex-officio member of the Board, without voting rights.

### 7.2 Chairperson

- (a) The Board may elect a Board Member as chairperson of Board meetings and may determine the period for which the chairperson will hold office.
- (b) Except as otherwise agreed by the Board:
  - (i) a chairperson will hold office for three years;
  - (ii) a chairperson must retire from office at the conclusion of that three year term, and will be eligible for re-election by the Board; and
  - (iii) a retiring chairperson will be ineligible for re-election after serving three terms in office.
- (c) If no chairperson is elected or if the chairperson is not present and, if a deputy chairperson is elected, the deputy chairperson is not present at any Board meeting within ten minutes after the time appointed for the meeting to begin, the Board must elect a Board Member to be chairperson of the meeting.

- (d) The Board may elect a Board Member as deputy chairperson to act as chairperson in the chairperson's absence.
- (e) The term of a chairperson's appointment ends automatically when the chairperson ceases to be a Board Member.
- (f) In the event of a casual vacancy in the office of chairperson, the Board may appoint one of its members to the vacant office and the member appointed may continue in office for three years or any shorter term determined by the Board.

### **7.3 Officers**

- (a) The Board may elect a Board Member as an officer of the Association and may determine the period for which the officer will hold office.
- (b) Except as otherwise agreed by the Board:
  - (i) an officer will hold office for three years;
  - (ii) an officer must retire from office at the conclusion of that three year term, and will be eligible for re-election by the Board; and
  - (iii) a retiring officer will be ineligible for re-election to that office after serving three terms in office.
- (c) The term of an officer's appointment ends automatically when the officer ceases to be a Board Member.
- (d) In the event of a casual vacancy in any office, the Board may appoint one of its members to the vacant office and the member appointed may continue in office for three years or any shorter term determined by the Board.
- (e) Each officer of the Association will hold office up to and including the earlier of:
  - (i) the end of the term determined by the Board; and
  - (ii) the third anniversary of the date of their election by the Board,
 but is eligible for re-election subject to these Rules.

### **7.4 Board Members**

- (a) Subject to these Rules, each Board Member will hold office until the conclusion of the third annual General meeting after the Board Member was last elected, but is eligible for re-election. In addition:
  - (i) a Board Member must retire from office at the conclusion of that three year term, and will be eligible for re-election by the Board; and
  - (ii) except as otherwise agreed by the Board, a retiring Board Member will be ineligible for re-election after serving three terms in office.
- (b) In the event of a casual vacancy occurring in the office of a Board Member, the Board may appoint an Ordinary Member of the Association to fill the vacancy and the Ordinary Member appointed will hold office, subject to these Rules, until the conclusion of the annual General Meeting next following the date of the appointment.
- (c) The Board may have regard to the following when appointing any person as a Board Member to fill a casual vacancy or as an addition to the existing Board Members:
  - (i) ensuring that the Board Members collectively have appropriate skills and expertise and are able to effectively promote the objects of the Association;
  - (ii) ensuring that suitable persons with appropriate skills and expertise are appointed to the Board;
  - (iii) commonly accepted principles of good corporate governance as reasonably applicable to the Association in its circumstances from time to time;

- (iv) the need for the Board to have an appropriate size, composition, skills, commitment and diversity to enable the Board Members to discharge their duties effectively, including recognising and managing risk;
- (v) the need for strong engagement with Members;
- (vi) the views of Members, advisers, sponsors and other stakeholders, as communicated to the Board from time to time;
- (vii) ensuring that each Board Member is interested in the objects of the Association and can be reasonably expected to devote sufficient time to discharge their duties effectively;
- (viii) ensuring that the number of Board Members is appropriate given the Association's circumstances;
- (ix) the need for the Board to be adaptable and responsive to the circumstances of the Association from time to time;
- (x) whether that nominee is reasonably likely to have any conflict of interest with the Association;
- (xi) whether the conduct or position of any nominee is such that appointment as a Board Member appears to the Board to be prejudicial to the interests of the Association; and
- (xii) the overarching need for the Board to be of the opinion that this appointment is in the interests of the Association.

## **7.5 Election of Board Members**

- (a) Nominations of candidates for election as Board Members must be:
  - (i) made in writing and accompanied by the written consent of the candidate (which may be endorsed on the form of nomination); and
  - (ii) delivered to the Secretary of the Association not less than 28 days before the date fixed for the holding of the annual General Meeting.
- (b) A candidate may only be nominated as Board Member prior to the annual General Meeting.
- (c) Only Ordinary Members are eligible to be Board Members. Associate Members are not eligible to be Board Members.
- (d) If insufficient nominations are received to fill all vacancies on the Board, the Board approved candidates nominated will be deemed to be elected.
- (e) If the number of Board approved nominations received is equal to the number of vacancies to be filled, the persons nominated will be deemed to be elected.
- (f) If the number of Board approved nominations exceeds the number of vacancies to be filled, a ballot must be held.
- (g) The ballot for the election of Board Members must be conducted at the annual General Meeting in such manner as the Board may direct.

## **7.6 Vacancies**

The office of an officer of the Association, or of an Ordinary Board Member, becomes vacant if the officer or member:

- (a) ceases to be an Ordinary Member of the Association;
- (b) becomes permanently incapacitated due to ill health;
- (c) is absent without apology for more than 3 meetings in a financial year;
- (d) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* (Cth);



- (e) resigns from office by notice in writing given to the Secretary; or
- (f) is prohibited from being a Board Member under the Act.

### **7.7 Meetings of the Board**

- (a) The Board will meet as often as is required, but at least 6 times in each year at such place and such times as the Board may determine.
- (b) Special meetings of the Board may be convened by the Chairperson or by any two Board Members.

### **7.8 Notice of Board meetings**

- (a) Written notice of each Board meeting must be given to each Board Member at least 2 business days before the date of the meeting.
- (b) Written notice must be given to Board Members of any special meeting specifying the general nature of the business to be conducted and no other business may be conducted at such a meeting.

### **7.9 Quorum for Board meetings**

- (a) Over 50% of the board members must be present to constitute a quorum for the conduct of the business of a meeting of the Board.
- (b) No business may be conducted unless a quorum is present.
- (c) If within half an hour of the time appointed for the meeting a quorum is not present:
  - (i) in the case of a special meeting, the meeting lapses; and
  - (ii) in any other case, the meeting will stand adjourned to the same place and the same time and day in the following week.
- (d) The Board may act notwithstanding any vacancy on the Board.

### **7.10 Chairperson at Board meetings**

At meetings of the Board:

- (a) the Chairperson or, in the Chairperson's absence, the Deputy Chairperson will preside as chairperson; or
- (b) if the Chairperson and the Deputy Chairperson are absent, or are unable to preside, the Board Members present must choose one of their number to preside.

### **7.11 Voting at Board meetings**

- (a) Questions arising at a meeting of the Board, or at a meeting of any sub-committee appointed by the Board, will be determined on a show of hands.
- (b) Subject to Rule 7.1(h) and 8.3(b), each Board Member present at a meeting of the Board, or at a meeting of any sub-committee appointed by the Board (including the person presiding at the meeting), is entitled to one vote.

### **7.12 Removal of Board Member**

- (a) The Association in General Meeting may, by Special Resolution, remove any Board Member before the expiration of their term of office and appoint another person in their place to hold office until the expiration of the term of the first-mentioned Board Member.
- (b) A Board Member who is the subject of a proposed resolution referred to in rule 7.12(a) may make representations in writing to the Secretary or Chairperson of the Association (not exceeding a reasonable length) and may request that the representations be provided to the Members.

- (c) The Secretary or the Chairperson may give a copy of the representations to each Member or, if they are not so given, the Member may require that they be read out at the meeting.

### **7.13 Circulating Resolutions**

- (a) If all the Board Members who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a meeting of the Board held on the day on which the document was last signed by a Board Member.
- (b) For the purposes of clause 7.13(a), two or more identical documents, each of which is signed by one or more Board Members, together constitute one document signed by those Board Members on the days on which they signed the separate documents.
- (c) Any document referred to in this clause may be in the form of an email or other electronic transmission.

## **8. Other positions**

### **8.1 Chief Executive**

The Board may appoint a chief executive (whether or not so called) to be responsible for the day-to-day management of the Association, and may delegate such tasks to that Chief Executive as the Board believes to be appropriate from time to time.

### **8.2 Patron**

The Board may from time to time appoint one or more Patrons of the Association.

### **8.3 Public officer**

- (a) The Association must have a public officer for the purposes of the Act.
- (b) Unless the Board decides otherwise, the Chief Executive will act as public officer and Secretary, and for the avoidance of doubt, will not, in either of those capacities, have a vote under Rule 7.11(b).

## **9. Financial matters**

### **9.1 Funds**

- (a) The Treasurer of the Association shall ensure that
  - (i) all moneys due to the Association are collected and received and all payments authorised by the Association are made;
  - (ii) correct accounts and books are kept showing the financial affairs of the Association with full details of all receipts and expenditure connected with the activities of the Association; and
  - (iii) all cheques, drafts, bills of exchange, promissory notes and other negotiable instruments are signed by two Board Members or per financial or business delegations.
- (b) The funds of the Association will be derived from entrance fees, annual subscriptions, donations and such other sources as the Board determines.

### **9.2 Borrowing powers**

- (a) Subject to this Rule, the Association may borrow money from banks or other financial institutions upon such terms and conditions as the Board sees fit, and may secure the repayment of that money by charging the property of the Association.

- (b) Subject to section 53 of the Act, the Association may invite and accept deposits of money from any person on such terms and conditions as may be determined by the Board from time to time.

### **9.3 Accounts**

- (a) The Association must keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the Association.
- (b) The financial statements of the Association must be laid before the Members at the annual General Meeting (and if the Association has appointed an auditor, these must be the audited financial statements).

### **9.4 Audit**

- (a) The Association may (and, if required by the Act, must) appoint an auditor.
- (b) Any auditor so appointed will hold office for such period as the Association determines.
- (c) An auditor has the rights and duties prescribed by the Act.

### **9.5 Gifts, contributions etc**

- (a) The Association must comply with section 382-15 of Schedule 1 of the *Taxation Administration Act 1953 (Cth)*.
- (b) At the first occurrence of one of the following events:
  - (i) the winding up of the Association; and
  - (ii) the revocation of the Association's endorsement under Subdivision 30-BA of the Tax Act,

the Association must transfer any surplus referred to in section 30-125(6)(b) of the Tax Act to one or more charitable funds, authorities or institutions gifts to which can be deducted under Division 30 of the Tax Act (as selected by the Board at or prior to the relevant event, or in default by the Supreme Court of South Australia).

## **10. Winding up or deregistration**

- (a) The Association may be wound up or deregistered in the manner provided for in the Act.
- (b) Members will not be liable to contribute towards the payment of the debts and liabilities of the Association or the costs, charges, and expenses of a winding up or deregistration of the Association.
- (c) If upon the winding up or deregistration of the Association there remains 'surplus assets' as defined in the Act (apart from any assets dealt with under clause 9.5), such surplus assets:
  - (i) must not be distributed amongst the Members, except in accordance with paragraph (ii); and
  - (ii) will be distributed to one or more charitable funds, authorities or institutions:
    - (A) which are not carried on for the profit or gain of their members;
    - (B) which have objects that are similar to the objects of the Association; and
    - (C) gifts to which can be deducted under Division 30 of the Tax Act,as selected by the Board at or prior to winding up or deregistration (or in default by the Supreme Court of South Australia).

## 11. Other matters

### 11.1 Minutes of meetings

The Secretary must keep minutes of the resolutions and proceedings of each General Meeting, and each Board meeting, together with a record of the names of persons present at those meetings.

### 11.2 By-laws

The Board may make such by-laws as it deems fit and may amend them in accordance with such procedures as it may adopt for that purpose.

### 11.3 Seal

- (a) The common seal of the Association must be kept in the custody of the Secretary.
- (b) The common seal must not be affixed to any instrument except by the authority of the Board and the affixing of the common seal must be attested by the signatures of two Board Members.

### 11.4 Notices

Any notice that is required to be given to a Member or a Board Member (**Recipient**), by or on behalf of the Association under these Rules may be given by:

- (a) delivering the notice to the Recipient personally;
- (b) sending it by prepaid post addressed to the Recipient at that Recipient's address as shown in the register of Members or register of Board Members (as the case may be); or
- (c) electronic transmission, if the Recipient has requested that the notice be given to them in this manner.

### 11.5 Indemnity

- (a) Subject to the Act, every person who is or has been a Board Member of the Association shall be indemnified out of the property of the Association against any liabilities, losses, costs, expenses and damages whatsoever sustained or incurred directly or indirectly in connection with that person's position as a Board Member of the Association and the discharge by the person of their duties as a Board Member of the Association except:
  - (i) a liability owed to the Association; or
  - (ii) a liability that did not arise out of conduct in good faith; or
  - (iii) legal costs in defending or resisting proceedings in which the person is found by a Court to have a liability for which the person cannot be indemnified under any of the foregoing provisions of this rule; or
  - (iv) legal costs in defending or resisting criminal proceedings in which the person is found guilty.
- (b) For the purposes of this rule:
  - (i) "conduct" includes acts and omissions;
  - (ii) "legal costs" means legal costs on a solicitor and client basis; and
  - (iii) the outcome of legal proceedings means the outcome of the proceedings and any appeal in relation to the proceedings.
- (c) Where a person seeks to rely on the indemnities contained in this rule, that person shall:
  - (i) immediately notify the Association of any claim which gives rise to or could give rise to a liability of the Association to that person;

- (ii) permit the Association to conduct any negotiations and legal proceedings in respect of the claim in the name of the person and to have the sole arrangement and the control of such negotiations or proceedings and to settle or compromise the claim or make an admission or payment in relation thereto;
  - (iii) not make any admission without the prior written consent of the Association;
  - (iv) promptly render all reasonable assurance and co-operation to the Association as requested by the Association.
- (d) Subject to the provisions of any privacy legislation to which the Association is subject at the time, the Association shall make available for inspection by any person who is or has been a Board Member of the Association the books of the Association at all reasonable times for the purposes of any investigations or legal proceedings whether directly or indirectly in connection with that person's position as a Board Member of the Association:
- (i) to which the person is a party; or
  - (ii) that the person proposes in good faith to bring; or
  - (iii) that the person has reason to believe will be brought against the person.

### **11.6 Books and records**

- (a) Except as otherwise provided in these Rules, the Secretary must keep in their custody or under their control all books, documents and securities of the Association.
- (b) Subject to the provisions of any privacy legislation to which the Association is subject at the time and subject to Rule 5.7, all accounts, books, securities and any other relevant documents of the Association must be available for inspection free of charge by any Member upon request.
- (c) Subject to the provisions of any privacy legislation to which the Association is subject at the time and subject to Rule 5.7, a Member may make a copy of any accounts, books, securities and any other relevant documents of the Association, but must maintain the confidentiality of all such copies and the information contained in them.

### **11.7 Compliance**

The Association must lodge such returns, statements or other documentation as the Act (or any other legislation, State or Federal) requires from time to time.

## **12. Transitional provisions**

These Rules must be read and construed in such manner that:

- (a) every Board Member, Chief Executive and Officer in office as such immediately before the adoption of these Rules will continue in office subject to these Rules;
- (b) every Board Member, Chief Executive and Officer in office as such immediately before the adoption of these Rules will be deemed to be an Ordinary Member, and unless otherwise agreed by the Board:
  - (i) an officer will hold office for a maximum of three years commencing from the first annual General Meeting held after the adoption of these Rules;
  - (ii) an officer must retire from office at the conclusion of that three year term, and will be eligible for re-election by the Board; and
  - (iii) a retiring officer will be ineligible for re-election to that office after serving three terms in office, with the first term deemed to commence from the first annual General Meeting held after the adoption of the Rules;

- (c) any register maintained by the Association immediately before the adoption of these Rules will be deemed to be a register maintained pursuant to these Rules;
- (d) any seal adopted by the Association before the adoption of these Rules will be deemed to be a seal which the Association has under a relevant authority conferred by these Rules;  
and
- (e) unless a contrary intention appears in these Rules all persons, things and circumstances appointed or created by or under the rules of the Association in force before the adoption of these Rules will continue to have the same status, operation and effect after the adoption of these Rules.

