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**Hampton Park Care Group Inc.**



**CONSUMER AFFAIRS VICTORIA**

**Associations Incorporation Reform Act 2012**

**HAMPTON PARK**

**CARE GROUP INC**

**RULES OF ASSOCIATION**

**Associations Incorporation Reform Regulations 2012**

**15 May 2024**



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## Note

The persons who from time to time are members of the Association are an incorporated association by the name given in rule 1 of these Rules.

Under section 46 of the **Associations Incorporation Reform Act 2012**, these Rules are taken to constitute the terms of a contract between the Association and its members.

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## PART 1—PRELIMINARY

### 1 Name

The name of the incorporated association is “Hampton Park Care Group Inc”.

#### Note

Under section 23 of the Act, the name of the association and its registration number must appear on all its business documents.

### 2 Purposes

- (1) The Association is established to provide public benevolent relief to vulnerable and disadvantaged individuals and families from Hampton Park, Victoria and surrounding areas (“persons in need”). These persons in need may be part of culturally and linguistically diverse, LGBTQI communities, and also include people of all abilities. Without limiting how the Association may provide relief, the Association will:
  - (a) Provide education, care and child and family support services in response to the educational, health and wellbeing, and community development needs of persons in need;
  - (b) Assist persons in need to secure a measure of independence and self-support; and
  - (c) Facilitate persons in need to participate in and socially connect to their communities.

### 3 Financial year

The financial year of the Association is each period of 12 months ending on 31<sup>st</sup> December.

### 4 Interpretation

- (1) In these Rules—

***absolute majority***, of the Board of Governance, means a majority of the Board of Governance members currently holding office and entitled to vote at the time (as distinct from a majority of Board of Governance members present at a Board of Governance meeting);

***ACNC*** means the Australian Charities and Not-for-profits Commission;

***ACNC Act*** means *Australian Charities and Not-for-profits Commission Act 2012* (Cth) as amended from time to time;

***associate member*** means a member referred to in rule 14(1);

***Chairperson***, of a general meeting or Board of Governance meeting, means the person chairing the meeting as required under rule 46;

***Board of Governance*** means the Board of Governance having management of the business of the Association and the committee for the purposes of Part 6 of the Act.

***Board of Governance meeting*** means a meeting of the Board of Governance held in accordance with these Rules;

***Board of Governance member*** means a member of the Board of Governance

***disciplinary appeal meeting*** means a meeting of the members of the Association convened under rule 23(3);

***disciplinary meeting*** means a meeting of the Board of Governance convened for the purposes of rule 22;



*disciplinary sub-committee* means the sub-committee appointed by the Board of Governance under rule 20;

*Executive Committee* means the sub-committee appointed by the Board of Governance comprised of senior leadership staff and officeholders of the Association;

*financial year* means the 12 month period specified in rule 3;

*general meeting* means a general meeting of the members of the Association convened in accordance with Part 4 and includes an annual general meeting, a special general meeting and a disciplinary appeal meeting;

*member* means a member of the Association;

*Registered Charity* means registered as a charity with the ACNC;

*special resolution* means a resolution that requires not less than three-quarters of the members voting at a general meeting, whether in person or by proxy, to vote in favour of the resolution;

*the Act* means the *Associations Incorporation Reform Act 2012 (Vic)* and includes any regulations made under that Act;

*the Registrar* means the Registrar of Incorporated Associations.

(2) The Associations Incorporation Reform Act 2012 and ACNC Act apply as follows:

- (a) While the Association is a Registered Charity, the ACNC Act and the Associations Incorporation Reform Act 2012 (Vic) (to the extent that it applies) override any Rules in these Rules which are inconsistent with those Acts.
- (b) If the Association is not a Registered Charity (even if it remains a charity), the Associations Incorporation Reform Act 2012 (Vic) overrides any rule in these Rules which is inconsistent with that Act.
- (c) Where any rule in these Rules is invalid or unenforceable or conflicts with any provision of the Associations Incorporation Reform Act 2012 (Vic) and/or the ACNC Act as applicable under subrules (a) or (b), it will be read and interpreted as being subject to the provision(s) and will be ineffective, but only to the extent of any invalidity, unenforceability or conflict.
- (d) A word or expression that is defined in the Associations Incorporation Reform Act 2012 (Vic) or used in that Act and covering the same subject, has the same meaning as in this Constitution.

## **PART 2—POWERS OF ASSOCIATION**

### **5 Powers of Association**

- (1) Subject to the Act, the Association has power to do all things incidental or conducive to achieve its purposes.
- (2) Without limiting subrule (1), the Association may—
  - (a) acquire, hold and dispose of real or personal property;
  - (b) open and operate accounts with financial institutions;
  - (c) invest its money in any security in which trust monies may lawfully be invested;
  - (d) raise and borrow money on any terms and in any manner as it thinks fit;

- (e) secure the repayment of money raised or borrowed, or the payment of a debt or liability;
  - (f) appoint agents to transact business on its behalf;
  - (g) enter into any other contract it considers necessary or desirable.
- (3) The Association may only exercise its powers and use its income and assets (including any surplus) for its purposes.

## **6 Not for profit organisation**

- (1) The Association must not distribute any surplus, income or assets directly or indirectly to its members.
- (2) Subrule (1) does not prevent the Association from paying a member—
- (a) reimbursement for expenses properly incurred by the member; or
  - (b) for goods or services provided by the member—

if this is done in good faith on terms no more favourable than if the member was not a member.

### **Note**

Section 33 of the Act provides that an incorporated association must not secure pecuniary profit for its members. Section 4 of the Act sets out in more detail the circumstances under which an incorporated association is not taken to secure pecuniary profit for its members.

## **PART 3—MEMBERS, DISCIPLINARY PROCEDURES AND GRIEVANCES**

### **Division 1—Membership**

## **7 Minimum number of members**

The Association must have at least 5 members.

## **8 Who is eligible to be a member**

Any person who supports the purposes of the Association is eligible for membership.

## **9 Application for membership**

- (1) To apply to become a member of the Association, a person must submit a written application to a Board of Governance member stating that the person—
- (a) wishes to become a member of the Association; and
  - (b) supports the purposes of the Association; and
  - (c) agrees to comply with these Rules.
- (2) The application—
- (a) must be signed by the applicant; and
  - (b) may be accompanied by the joining fee.

### **Note**

The joining fee is the fee (if any) determined by the Association under rule 12(3).

## **10 Consideration of application**

- (1) As soon as practicable after an application for membership is received, the Board of Governance must decide by resolution whether to accept or reject the application.

- (2) The Board of Governance must notify the applicant in writing of its decision as soon as practicable after the decision is made.
- (3) If the Board of Governance rejects the application, it must return any money accompanying the application to the applicant.
- (4) No reason need be given for the rejection of an application.

#### **11 New membership**

- (1) If an application for membership is approved by the Board of Governance—
  - (a) the resolution to accept the membership must be recorded in the minutes of the Board of Governance meeting; and
  - (b) the Secretary must, as soon as practicable, enter the name and address of the new member, and the date of becoming a member, in the register of members.
- (2) A person becomes a member of the Association and, subject to rule 13(2), is entitled to exercise his or her rights of membership from the date, whichever is the later, on which—
  - (a) the Board of Governance approves the person's membership; or
  - (b) the person pays the joining fee.

#### **12 Annual subscription and fee on joining**

- (1) At each annual general meeting, the Association must determine—
  - (a) the amount of the annual subscription (if any) for the following financial year; and
  - (b) the date for payment of the annual subscription.
- (2) The Association may determine that a lower annual subscription is payable by associate members.
- (3) The Association may determine that any new member who joins after the start of a financial year must, for that financial year, pay a fee equal to—
  - (a) the full annual subscription; or
  - (b) a pro rata annual subscription based on the remaining part of the financial year; or
  - (c) a fixed amount determined from time to time by the Association.
- (4) The rights of a member (including the right to vote) who has not paid the annual subscription by the due date are suspended until the subscription is paid.
- (5) All fees will be waived for Life Members.

#### **13 General rights of members**

- (1) A member of the Association who is entitled to vote has the right—
  - (a) to receive notice of general meetings and of proposed special resolutions in the manner and time prescribed by these Rules; and
  - (b) to submit items of business for consideration at a general meeting; and
  - (c) to attend and be heard at general meetings; and
  - (d) to vote at a general meeting; and
  - (e) to have access to the minutes of general meetings and other documents of the Association as provided under rule 75; and
  - (f) to inspect the register of members.
- (2) A member is entitled to vote if—

- (a) the member is a member other than an associate member; and
- (b) more than 10 business days have passed since he or she became a member of the Association; and
- (c) the member's membership rights are not suspended for any reason.

#### **14 Special categories of non-voting membership**

- (1) Associate members of the Association include—
  - (a) any members under the age of 15 years; and
  - (b) any other category of member as determined by special resolution at a general meeting.
- (2) An associate member must not vote but may have other rights as determined by the Board of Governance or by resolution at a general meeting.
- (3) Life members are associate members who have made an outstanding contribution to the community of the Association in a voluntary capacity and are non-financial
- (4) The process for nominating Life members is determined by the Board of Governance.
- (5) The decision whether to grant or revoke Life membership is determined by the Board of Governance.

#### **15 Rights not transferable**

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

#### **16 Ceasing membership**

- (1) The membership of a person ceases on resignation, expulsion or death.
- (2) If a person ceases to be a member of the Association, the Secretary must, as soon as practicable, enter the date the person ceased to be a member in the register of members.

#### **17 Resigning as a member**

- (1) A member may resign by notice in writing given to the Association.

##### **Note**

Rule 76(3) sets out how notice may be given to the association. It includes by post or by handing the notice to a member of the Board of Governance.

- (2) A member is taken to have resigned if—
  - (a) the member's annual subscription is more than 12 months in arrears; or
  - (b) where no annual subscription is payable—
    - (i) the Secretary has made a written request to the member to confirm that he or she wishes to remain a member; and
    - (ii) the member has not, within 3 months after receiving that request, confirmed in writing that he or she wishes to remain a member.

#### **18 Register of members**

- (1) The Secretary must keep and maintain a register of members that includes—
  - (a) for each current member—
    - (i) the member's name;



- (ii) the address for notice last given by the member;
  - (iii) the date of becoming a member;
  - (iv) if the member is an associate member, a note to that effect;
  - (v) any other information determined by the Board of Governance; and
  - (b) for each former member, the date of ceasing to be a member.
- (2) Any member may, at a reasonable time and free of charge, inspect the register of members.

**Note**

Under section 59 of the Act, access to the personal information of a person recorded in the register of members may be restricted in certain circumstances. Section 58 of the Act provides that it is an offence to make improper use of information about a person obtained from the Register of Members.

## **Division 2—Disciplinary action**

### **19 Grounds for taking disciplinary action**

The Association may take disciplinary action against a member in accordance with this Division if it is determined that the member—

- (a) has failed to comply with these Rules; or
- (b) refuses to support the purposes of the Association; or
- (c) has engaged in conduct prejudicial to the Association.

### **20 Disciplinary action by the Board of Governance**

- (1) If the Board of Governance is satisfied that there are sufficient grounds for taking disciplinary action against a member, the Board of Governance must appoint a disciplinary sub-committee to hear the matter and determine what action, if any, to take against the member.
- (2) The members of the disciplinary sub-committee—
  - (a) may be Board of Governance members, members of the Association or anyone else; but
  - (b) must not be biased against, or in favour of, the member concerned.

### **21 Notice to member**

- (1) Before disciplinary action is taken against a member, the Secretary must give written notice to the member—
  - (a) stating that the Association proposes to take disciplinary action against the member; and
  - (b) stating the grounds for the proposed disciplinary action; and
  - (c) specifying the date, place and time of the meeting at which the disciplinary sub-committee intends to consider the disciplinary action (the *disciplinary meeting*); and
  - (d) advising the member that he or she may do one or both of the following—
    - (i) attend the disciplinary meeting and address the disciplinary sub-committee at that meeting;
    - (ii) give a written statement to the disciplinary sub-committee any time before the disciplinary meeting; and



- (e) setting out the member's appeal rights under rule 23.
- (2) The notice must be given no earlier than 28 days, and no later than 14 days, before the disciplinary meeting is held.

## **22 Decision of the disciplinary sub-committee**

- (1) At the disciplinary meeting, the disciplinary sub-committee must—
  - (a) give the member an opportunity to be heard; and
  - (b) consider any written statement submitted by the member.
- (2) After complying with subrule (1), the disciplinary sub-committee may—
  - (a) take no further action against the member; or
  - (b) subject to subrule (3)—
    - (i) reprimand the member; or
    - (ii) suspend the membership rights of the member for a specified period; or
    - (iii) expel the member from the Association.
- (3) The disciplinary sub-committee may not fine the member.
- (4) The suspension of membership rights or the expulsion of a member by the disciplinary sub-committee under this rule takes effect immediately after the vote is passed.

## **23 Appeal rights**

- (1) A person whose membership rights have been suspended or who has been expelled from the Association under rule 22 may give notice to the effect that he or she wishes to appeal against the suspension or expulsion.
- (2) The notice must be in writing and given—
  - (a) to the disciplinary sub-committee immediately after the vote to suspend or expel the person is taken; or
  - (b) to the Secretary not later than 48 hours after the vote.
- (3) If a person has given notice under subrule (2), a disciplinary appeal meeting must be convened by the Board of Governance as soon as practicable, but in any event not later than 21 days, after the notice is received.
- (4) Notice of the disciplinary appeal meeting must be given to each member of the Association who is entitled to vote as soon as practicable and must—
  - (a) specify the date, time and place of the meeting; and
  - (b) state—
    - (i) the name of the person against whom the disciplinary action has been taken; and
    - (ii) the grounds for taking that action; and
    - (iii) that at the disciplinary appeal meeting the members present must vote on whether the decision to suspend or expel the person should be upheld or revoked.

## **24 Conduct of disciplinary appeal meeting**

- (1) At a disciplinary appeal meeting—
  - (a) no business other than the question of the appeal may be conducted; and

- (b) the Board of Governance must state the grounds for suspending or expelling the member and the reasons for taking that action; and
  - (c) the person whose membership has been suspended or who has been expelled must be given an opportunity to be heard.
- (2) After complying with subrule (1), the members present and entitled to vote at the meeting must vote by secret ballot on the question of whether the decision to suspend or expel the person should be upheld or revoked.
  - (3) A member may not vote by proxy at the meeting.
  - (4) The decision is upheld if not less than three quarters of the members voting at the meeting vote in favour of the decision.

### **Division 3—Grievance procedure**

#### **25 Application**

- (1) The grievance procedure set out in this Division applies to disputes under these Rules between—
  - (a) a member and another member;
  - (b) a member and the Board of Governance;
  - (c) a member and the Association.
- (2) A member must not initiate a grievance procedure in relation to a matter that is the subject of a disciplinary procedure until the disciplinary procedure has been completed.

#### **26 Parties must attempt to resolve the dispute**

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

#### **27 Appointment of mediator**

- (1) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 26, the parties must within 10 days—
  - (a) notify the Board of Governance of the dispute; and
  - (b) agree to or request the appointment of a mediator; and
  - (c) attempt in good faith to settle the dispute by mediation.
- (2) The mediator must be—
  - (a) a person chosen by agreement between the parties; or
  - (b) in the absence of agreement—
    - (i) if the dispute is between a member and another member—a person appointed by the Board of Governance; or
    - (ii) if the dispute is between a member and the Board of Governance or the Association—a person appointed or employed by the Dispute Settlement Centre of Victoria.
- (3) A mediator appointed by the Board of Governance may be a member or former member of the Association but in any case must not be a person who—
  - (a) has a personal interest in the dispute; or



(b) is biased in favour of or against any party.

## **28 Mediation process**

- (1) The mediator to the dispute, in conducting the mediation, must—
  - (a) give each party every opportunity to be heard; and
  - (b) allow due consideration by all parties of any written statement submitted by any party; and
  - (c) ensure that natural justice is accorded to the parties throughout the mediation process.
- (2) The mediator must not determine the dispute.

## **29 Failure to resolve dispute by mediation**

If the mediation process does not resolve the dispute, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

# **PART 4—GENERAL MEETINGS OF THE ASSOCIATION**

## **30 Annual general meetings**

- (1) The Board of Governance must convene an annual general meeting of the Association to be held within 5 months after the end of each financial year.
- (2) Despite subrule (1), the Association may hold its first annual general meeting at any time within 18 months after its incorporation.
- (3) The Board of Governance may determine the date, time and place of the annual general meeting.
- (4) 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;
  - (b) to receive and consider—
    - (i) the annual report of the Board of Governance on the activities of the Association during the preceding financial year; and
    - (ii) the financial statements of the Association for the preceding financial year submitted by the Board of Governance in accordance with Part 7 of the Act;
  - (c) to elect the members of the Board of Governance;
  - (d) to confirm or vary the amounts (if any) of the annual subscription and joining fee; and
  - (e) to induct Life Members.
- (5) The annual general meeting may also conduct any other business of which notice has been given in accordance with these Rules.

## **31 Special general meetings**

- (1) Any general meeting of the Association, other than an annual general meeting or a disciplinary appeal meeting, is a special general meeting.
- (2) The Board of Governance may convene a special general meeting whenever it thinks fit.

- (3) No business other than that set out in the notice under rule 33 may be conducted at the meeting.

**Note**

General business may be considered at the meeting if it is included as an item for consideration in the notice under rule 33 and the majority of members at the meeting agree.

**32 Special general meeting held at request of members**

- (1) The Board of Governance must convene a special general meeting if a request to do so is made in accordance with subrule (2) by at least 10% of the total number of members.
- (2) A request for a special general meeting must—
- (a) be in writing; and
  - (b) state the business to be considered at the meeting and any resolutions to be proposed; and
  - (c) include the names and signatures of the members requesting the meeting; and
  - (d) be given to the Secretary.
- (3) If the Board of Governance does not convene a special general meeting within one month after the date on which the request is made, the members making the request (or any of them) may convene the special general meeting.
- (4) A special general meeting convened by members under subrule (3)—
- (a) must be held within 3 months after the date on which the original request was made; and
  - (b) may only consider the business stated in that request.
- (5) The Association must reimburse all reasonable expenses incurred by the members convening a special general meeting under subrule (3).

**33 Notice of general meetings**

- (1) The Secretary (or, in the case of a special general meeting convened under rule 32(3), the members convening the meeting) must give to each member of the Association—
- (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 a special resolution is to be proposed—
    - (i) state in full the proposed resolution; and
    - (ii) state the intention to propose the resolution as a special resolution; and
  - (d) comply with rule 34(5).
- (3) This rule does not apply to a disciplinary appeal meeting.

**Note**

Rule 23(4) sets out the requirements for notice of a disciplinary appeal meeting.

**34 Proxies**

- (1) A member may appoint another member as his or her proxy to vote and speak on his or her behalf at a general meeting other than at a disciplinary appeal meeting.
- (2) The appointment of a proxy must be in writing and signed by the member making the appointment.
- (3) The member appointing the proxy may give specific directions as to how the proxy is to vote on his or her behalf, otherwise the proxy may vote on behalf of the member in any matter as he or she sees fit.
- (4) If the Board of Governance has approved a form for the appointment of a proxy, the member may use any other form that clearly identifies the person appointed as the member's proxy and that has been signed by the member.
- (5) Notice of a general meeting given to a member under rule 33 must—
  - (a) state that the member may appoint another member as a proxy for the meeting; and
  - (b) include a copy of any form that the Board of Governance has approved for the appointment of a proxy.
- (6) A form appointing a proxy must be given to the Chairperson of the meeting before or at the commencement of the meeting.
- (7) A form appointing a proxy sent by post or electronically is of no effect unless it is received by the Association no later than 24 hours before the commencement of the meeting.

### **35 Use of technology**

- (1) A member not physically present at a general meeting may be permitted to participate in the meeting by the use of technology that allows that member and the members present at the meeting to clearly and simultaneously communicate with each other.
- (2) For the purposes of this Part, a member participating in a general meeting as permitted under subrule (1) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

### **36 Quorum at general meetings**

- (1) No business may be conducted at a general meeting unless a quorum of members is present.
- (2) The quorum for a general meeting is the presence (physically, by proxy or as allowed under rule 35) of 10% of the members entitled to vote.
- (3) If a quorum is not present within 30 minutes after the notified commencement time of a general meeting—
  - (a) in the case of a meeting convened by, or at the request of, members under rule 32—the meeting must be dissolved;

#### **Note**

If a meeting convened by, or at the request of, members is dissolved under this subrule, the business that was to have been considered at the meeting is taken to have been dealt with. If members wish to have the business reconsidered at another special meeting, the members must make a new request under rule 32.

- (b) in any other case—
  - (i) the meeting must be adjourned to a date not more than 21 days after the adjournment; and

- (ii) notice of the date, time and place to which the meeting is adjourned must be given at the meeting and confirmed by written notice given to all members as soon as practicable after the meeting.
- (4) If a quorum is not present within 30 minutes after the time to which a general meeting has been adjourned under subrule (3)(b), the members present at the meeting (if not fewer than 3) may proceed with the business of the meeting as if a quorum were present.

### **37 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 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.

#### **Example**

The members may wish to have more time to examine the financial statements submitted by the Board of Governance at an annual general meeting.

- (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 33.

### **38 Voting at general meeting**

- (1) On any question arising at a general meeting—
  - (a) subject to subrule (3), each member who is entitled to vote has one vote; and
  - (b) members may vote personally or by proxy; and
  - (c) except in the case of a special resolution, the question must be decided on a majority of votes.
- (2) If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- (3) If the question is whether or not to confirm the minutes of a previous meeting, only members who were present at that meeting may vote.
- (4) This rule does not apply to a vote at a disciplinary appeal meeting conducted under rule 24.

### **39 Special resolutions**

A special resolution is passed if not less than three quarters of the members voting at a general meeting (whether in person or by proxy) vote in favour of the resolution.

#### **Note**

In addition to certain matters specified in the Act, a special resolution is required—

- (a) to remove a Board of Governance member from office ;
- (b) to alter these Rules, including changing the name or any of the purposes of the Association.

### **40 Determining whether resolution carried**

- (1) Subject to subsection (2), the Chairperson of a general meeting may, on the basis of 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—

and an entry to that effect in the minutes of the meeting is conclusive proof of that fact.

- (2) If a poll (where votes are cast in writing) is demanded by three or more members on any question—

- (a) the poll must be taken at the meeting in the manner determined by the Chairperson of the meeting; and
- (b) the Chairperson must declare the result of the resolution on the basis of the poll.

- (3) A poll demanded on the election of the Chairperson or on a question of an adjournment must be taken immediately.

- (4) A poll demanded on any other question must be taken before the close of the meeting at a time determined by the Chairperson.

#### **41 Minutes of general meeting**

- (1) The Board of Governance must ensure that minutes are taken and kept 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 include—
  - (a) the names of the members attending the meeting; and
  - (b) proxy forms given to the Chairperson of the meeting under rule 34(6); and
  - (c) the financial statements submitted to the members in accordance with rule 30(4)(b)(ii); and
  - (d) the certificate signed by two Board of Governance members certifying that the financial statements give a true and fair view of the financial position and performance of the Association; and
  - (e) any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.

### **PART 5—BOARD OF GOVERNANCE**

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

#### **42 Role and powers**

- (1) The business of the Association must be managed by or under the direction of a Board of Governance.
- (2) The Board of Governance may exercise all the powers of the Association except those powers that these Rules or the Act require to be exercised by general meetings of the members of the Association.
- (3) The Board of Governance may—

- (a) appoint and remove staff;
- (b) establish sub-committees with terms of reference it considers appropriate.

#### **43 Delegation**

- (1) The Board of Governance may delegate to a member of the Board of Governance or a sub-committee, any of its powers and functions other than—
  - (a) this power of delegation; or
  - (b) a duty imposed on the Board of Governance by the Act or any other law.
- (2) The sub-committee in subrule (1) must include one member of the Board of Governance, an employee or an ordinary member.
- (3) The delegation must be in writing and may be subject to the conditions and limitations the Board of Governance considers appropriate.
- (4) The Board of Governance may, in writing, revoke a delegation wholly or in part.

### **Division 2—Composition of Board of Governance and duties of members**

#### **44 Composition of Board of Governance**

- (1) The Board of Governance shall have a minimum of 3 members and a maximum of 8 members.
- (2) The Board of Governance consists of—
  - (a) a Chairman/woman; and
  - (b) a Vice-Chairman/woman; and
  - (c) a Secretary; and
  - (d) a Treasurer; and
  - (e) ordinary members; and
  - (f) co-opted members.

#### **45 General Duties**

- (1) As soon as practicable after being appointed to the Board of Governance, each Board of Governance member must become familiar with these Rules, the Act and the ACNC governance standards.
- (2) The Board of Governance is collectively responsible for ensuring that the Association complies with the Act and that individual members of the Board of Governance comply with these Rules.
- (3) The Board of Governance must meet the requirements for responsible entities (Board of Governance members) of registered charities and comply with the duties described in governance standard 5 of the regulations made under the ACNC Act, which are:
  - (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were an officeholder of the association;
  - (b) to act in good faith (fairly and honestly) in the best interests of the association and to further the charitable purpose(s) of the association set out in rule 2;
  - (c) not to misuse their position as an officeholder;
  - (d) not to misuse information they gain in their role as an officeholder;

- (e) to disclose any perceived or actual material conflicts of interest;
  - (f) to ensure that the financial affairs of the association are managed responsibly; and
  - (g) not to allow the association to operate while it is insolvent.
- (4) For clarity, subrule (3) is intended to require compliance with the ACNC governance standards as amended or modified from time to time.
- (5) In addition to any duties imposed by these Rules, a Board of Governance member must perform any other duties imposed from time to time by resolution at a general meeting.

#### **46 Chairman/woman and Vice-Chairman/woman**

- (1) Subject to subrule (2), the Chairman/woman or, in the Chairman/woman's absence, the Vice-Chairman/woman is the Chairperson for any general meetings and for any Board of Governance meetings.
- (2) If the Chairman/woman and the Vice-Chairman/woman are both absent, or are unable to preside, the Chairperson of the meeting must be—
- (a) in the case of a general meeting—a member elected by the other members present; or
  - (b) in the case of a Board of Governance meeting—a Board of Governance member elected by the other Board of Governance members present.

#### **47 Secretary**

- (1) The Secretary must perform any duty or function required under the Act to be performed by the secretary of an incorporated association.

##### **Example**

Under the Act, the secretary of an incorporated association is responsible for lodging documents of the association with the Registrar.

- (2) The Secretary must—
- (a) maintain the register of members in accordance with rule 18; and
  - (b) keep custody of the common seal (if any) of the Association and, except for the financial records referred to in rule 71(3), all books, documents and securities of the Association in accordance with rules 73 and 76; and
  - (c) subject to the Act and these Rules, provide members with access to the register of members, the minutes of general meetings and other books and documents; and
  - (d) perform any other duty or function imposed on the Secretary by these Rules.
- (3) The Secretary must give to the Registrar notice of his or her appointment within 14 days after the appointment.
- (4) The Secretary is the Public Officer for the Association for the purposes of the ACNC Act.
- (5) The Secretary may delegate any of his or her duties or functions to the Executive Committee.

#### **48 Treasurer**

- (1) The Treasurer must—
- (a) receive all moneys paid to or received by the Association and issue receipts for those moneys in the name of the Association; and
  - (b) ensure that all moneys received are paid into the account of the Association within 5 working days after receipt; and

- (c) make any payments authorised by the Board of Governance or by a general meeting of the Association from the Association's funds; and
  - (d) ensure cheques are signed by at least 2 Board of Governance members.
- (2) The Treasurer must—
- (a) ensure that the financial records of the Association are kept in accordance with the Act; and
  - (b) coordinate the preparation of the financial statements of the Association and their certification by the Board of Governance prior to their submission to the annual general meeting of the Association.
- (3) The Treasurer must ensure that at least one other Board of Governance member has access to the accounts and financial records of the Association.
- (4) The Treasurer may delegate any of his or her duties or functions to the Executive Committee.

#### **49 Co-opted Members**

- (1) Co-opted members of the Association do not have Board of Governance voting rights; however, they may be employed by the Association.
- (2) Co-opted members of the Association cease to be a member of the Board when they cease to be employed by the Association.

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

#### **50 Who is eligible to be a Board of Governance member**

- (1) A member is eligible to be elected or appointed as a Board of Governance member if the member—
  - (a) is 18 years or over;
  - (b) is entitled to vote at a general meeting;
  - (c) carries a current Working with Children Check; and
  - (d) is not ineligible to be a responsible person under the ACNC Act.
- (2) Anyone employed by the Association is eligible only for a co-opted position.

#### **51 Positions to be declared vacant**

- (1) This rule applies to—
  - (a) the first annual general meeting of the Association after its incorporation; or
  - (b) any subsequent annual general meeting of the Association, after the annual report and financial statements of the Association have been received.
- (2) The Chairperson of the meeting must declare all positions on the Board of Governance vacant and hold elections for those positions in accordance with rule 52.

## **52 Election of members of the Board of Governance**

- (1) Members of the Board of Governance are elected by the members of the Association at the Annual General Meeting.
- (2) A single election may be held to fill all of those positions.
- (3) If the number of members nominated for the position of Board of Governance member is less than or equal to the number to be elected, the Chairperson of the meeting must declare each of those members to be elected to the position.
- (4) If the number of members nominated exceeds the number to be elected, a ballot must be held in accordance with rule 55.

## **53 Election for Office Holders**

- (1) The Board of Governance shall elect from amongst its own numbers, the Chairman/Chairwoman ("Chair") and Vice Chairman/Vice Chairwoman ("Vice Chair") positions of the Association as follows:
  - a. all members then on the Board will be considered eligible for election as Chair unless a member or members of the Board expressly withdraw from being considered;
  - b. Co-opted members then on the Board shall not be eligible for election as Chair or Vice Chair unless the members at the immediately prior annual general meeting have agreed by resolution that one or more Co-opted members should be eligible for the position of Chair or, as the case may be, Vice Chair;
  - c. the election of the Chair will be conducted by ballot in accordance with rule 55, unless only one member of the Board remains eligible for appointment, in which case that member will be deemed to be Chair;
  - d. in the case of more than one member of the Board remaining eligible for the position of Chair, the member who obtains a simple majority of votes from the Board shall be elected to the position of Chair;
  - e. if the outcome of the secret ballot in subrule (1)(c) is a tie, a further secret ballot shall be conducted between the tied members. The member who obtains a simple majority of votes shall be elected to the position of Chair, and if the outcome of the further secret ballot is also a tie, the result will be determined by drawing lots;
  - f. on his or her election, the new Chair may take over as Chairperson of the meeting.
- (2) The provisions of subrules (1) (a) – (e) so far as they are applicable and with the necessary modifications apply to and in relation to the election of a Vice Chair, save that the member elected as Chair shall not be eligible for election as Vice Chair.
- (3) In the event of a casual vacancy in the position of Chair and Vice Chair, the Board may elect one of its members to the vacant position and the member appointed may continue in office up to and including the conclusion of the annual general meeting next following the date of the appointment.

## **54 Appointment of Secretary and Treasurer**

- (1) Subject to subrule 44(2), the Secretary and Treasurer are appointed by the Board of Governance.

## 55 Ballot

- (1) If a ballot is required for the election for a position, the Chairperson of the meeting must appoint a member to act as returning officer to conduct the ballot.
- (2) The returning officer must not be a member nominated for the position.
- (3) Before the ballot is taken, each candidate may make a short speech in support of his or her election.
- (4) The election must be by secret ballot.
- (5) The returning officer must give a blank piece of paper to—
  - (a) each member present in person; and
  - (b) each proxy appointed by a member.

### Example

If a member has been appointed the proxy of 5 other members, the member must be given 6 ballot papers—one for the member and one each for the other members.

- (6) If the ballot is for a single position, the voter must write on the ballot paper the name of the candidate for whom they wish to vote.
- (7) If the ballot is for more than one position—
  - (a) the voter must write on the ballot paper the name of each candidate for whom they wish to vote;
  - (b) the voter must not write the names of more candidates than the number to be elected.
- (8) Ballot papers that do not comply with subrule (7)(b) are not to be counted.
- (9) Each ballot paper on which the name of a candidate has been written counts as one vote for that candidate.
- (10) The returning officer must declare elected the candidate or, in the case of an election for more than one position, the candidates who received the most votes.
- (11) If the returning officer is unable to declare the result of an election under subrule (10) because 2 or more candidates received the same number of votes, the returning officer must—
  - (a) conduct a further election for the position in accordance with subrules (4) to (10) to decide which of those candidates is to be elected; or
  - (b) with the agreement of those candidates, decide by lot which of them is to be elected.

### Examples

The choice of candidate may be decided by the toss of a coin, drawing straws or drawing a name out of a hat.

## 56 Term of office

- (1) At each annual General Meeting:
  - (a) any director appointed by the directors to fill a casual vacancy or as an additional director must retire; and
  - (b) at least one-third of the remaining directors must retire.
- (2) The directors who must retire at each annual General Meeting under subrule (1)(b) will be the directors who have been longest in office since last being elected, and where

directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.

- (3) Other than a director appointed under rule 58, a director's term of office starts at the end of the annual General Meeting at which they are elected and ends at the end of the third annual General Meeting at which they retire (Board term).
- (4) A director who retires under subrule (1)(b) may nominate for election or re-election, subject to subrule (5).
- (5) A Board of Governance member shall serve no more than three Board terms.
- (6) A general meeting of the Association may—
  - (a) by special resolution remove a Board of Governance member from office; and
  - (b) elect an eligible member of the Association to fill the vacant position in accordance with this Division.
- (7) A member who is the subject of a proposed special resolution under subrule (6)(a) may make representations in writing to the Secretary or Chairman/woman of the Association (not exceeding a reasonable length) and may request that the representations be provided to the members of the Association.
- (8) The Secretary or the Chairman/woman may give a copy of the representations to each member of the Association or, if they are not so given, the member may require that they be read out at the meeting at which the special resolution is to be proposed.

#### **57 Vacation of office**

- (1) A Board of Governance member may resign from the Board of Governance by written notice addressed to the Board of Governance.
- (2) A person ceases to be a Board of Governance member if he or she—
  - (a) ceases to be a member of the Association; or
  - (b) fails to attend 3 consecutive Board of Governance meetings (other than special or urgent Board of Governance meetings) without leave of absence under rule 69; or
  - (c) becomes ineligible to be a responsible entity under the ACNC Act; or
  - (d) otherwise ceases to be a Board of Governance member by operation of section 78 of the Act.

#### **Note**

A Board of Governance member may not hold the office of secretary if they do not reside in Australia.

#### **58 Filling casual vacancies**

- (1) The Board of Governance may appoint an eligible member of the Association to fill a position on the Board of Governance that—
  - (a) has become vacant under rule 57; or
  - (b) was not filled by election at the last annual general meeting.
- (2) If the position of Secretary becomes vacant, the Board of Governance must appoint a member to the position within 14 days after the vacancy arises.
- (3) Rule 56 applies to any Board of Governance member appointed by the Board of Governance under subrule (1) or (2).
- (4) The Board of Governance may continue to act despite any vacancy in its membership.

## **Division 4—Meetings of Board of Governance**

### **59 Meetings of Board of Governance**

- (1) The Board of Governance must meet at least 4 times in each year at the dates, times and places determined by the Board of Governance.
- (2) The date, time and place of the first Board of Governance meeting must be determined by the members of the Board of Governance as soon as practicable after the annual general meeting of the Association at which the members of the Board of Governance were elected.
- (3) Special Board of Governance meetings may be convened by the Chairman/woman or by any 4 members of the Board of Governance.

### **60 Notice of meetings**

- (1) Notice of each Board of Governance meeting must be given to each Board of Governance member no later than 7 days before the date of the meeting.
  - (2) Notice may be given of more than one Board of Governance meeting at the same time.
  - (3) The notice must state the date, time and place of the meeting.
  - (4) If a special Board of Governance meeting is convened, the notice must include the general nature of the business to be conducted.
  - (5) The only business that may be conducted at the meeting is the business for which the meeting is convened.

### **61 Urgent meetings**

- (1) In cases of urgency, a meeting can be held without notice being given in accordance with rule 60 provided that as much notice as practicable is given to each Board of Governance member by the quickest means practicable.
- (2) Any resolution made at the meeting must be passed by an absolute majority of the Board of Governance.
- (3) The only business that may be conducted at an urgent meeting is the business for which the meeting is convened.

### **62 Procedure and order of business**

- (1) The procedure to be followed at a meeting of a Board of Governance must be determined from time to time by the Board of Governance.
- (2) The order of business may be determined by the members present at the meeting.

### **63 Use of technology**

- (1) A Board of Governance member who is not physically present at a Board of Governance meeting may participate in the meeting by the use of technology that allows that Board of Governance member and the Board of Governance members present at the meeting to clearly and simultaneously communicate with each other.
- (2) For the purposes of this Part, a Board of Governance member participating in a Board of Governance meeting as permitted under subrule (1) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

### **64 Quorum**

- (1) No business may be conducted at a Board of Governance meeting unless a quorum is present.
- (2) The quorum for a Board of Governance meeting is the presence (in person or as allowed under rule 63) of a majority of the Board of Governance members holding office.
- (3) If a quorum is not present within 30 minutes after the notified commencement time of a Board of Governance meeting—
  - (a) in the case of a special meeting—the meeting lapses;
  - (b) in any other case—the meeting must be adjourned to a date no later than 14 days after the adjournment and notice of the time, date and place to which the meeting is adjourned must be given in accordance with rule 60.

#### **65 Voting**

- (1) On any question arising at a Board of Governance meeting, each Board of Governance member present at the meeting has one vote.
- (2) A motion is carried if a majority of Board of Governance members present at the meeting vote in favour of the motion.
- (3) Subrule (2) does not apply to any motion or question which is required by these Rules to be passed by an absolute majority of the Board of Governance.
- (4) If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- (5) Voting by proxy is not permitted.

#### **66 Circular resolutions by Board of Governance is permitted**

- (1) Where the Chairman/Chairwoman decides that a matter is urgent and cannot wait until the next scheduled meeting of Board of Governance, a Board meeting may be held by circular resolution or by the Board of Governance members communicating with each other by email;
- (2) In such cases, documentation and a recommendation will be circulated in hard copy or via email to all Board of Governance members for consideration;
- (3) A resolution in writing may consist of several documents in like form, each signed by one or more Board of Governance members;
- (4) A resolution signed or agreed by email by all of the Board of Governance members for the time being entitled to vote in relation to the resolution (not being less than a quorum) and stating that the Board of Governance members are in favour of the resolution will be as valid and effectual from the time it is signed or agreed by email by the last Board of Governance member as if it had been passed at a duly convened meeting of Board provided each Board of Governance member has received reasonable notice of the resolution; and
- (5) Every such resolution shall be deemed to have been passed on the day and at the time at which the last Board of Governance member signed or agreed to the document by email.

#### **67 Conflict of interest**

- (1) A Board of Governance member who has a material personal interest in a matter being considered at a Board of Governance meeting must disclose the nature and extent of that interest to the Board of Governance.
- (2) The member—
  - (a) must not be present while the matter is being considered at the meeting; and
  - (b) must not vote on the matter.

**Note**

Under section 81(3) of the Act, if there are insufficient Board of Governance members to form a quorum because a member who has a material personal interest is disqualified from voting on a matter, a general meeting may be called to deal with the matter.

- (3) This rule does not apply to a material personal interest—
  - (a) that exists only because the member belongs to a class of persons for whose benefit the Association is established; or
  - (b) that the member has in common with all, or a substantial proportion of, the members of the Association.

**68 Minutes of meeting**

- (1) The Board of Governance must ensure that minutes are taken and kept of each Board of Governance meeting.
- (2) The minutes must record the following—
  - (a) the names of the members in attendance at the meeting;
  - (b) the business considered at the meeting;
  - (c) any resolution on which a vote is taken and the result of the vote;
  - (d) any material personal interest disclosed under rule 67.

**69 Leave of absence**

- (1) The Board of Governance may grant a Board of Governance member leave of absence from Board of Governance meetings for a period not exceeding 3 months.
- (2) The Board of Governance must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Board of Governance member to seek the leave in advance.

**PART 6—FINANCIAL MATTERS**

**70 Source of funds**

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

**71 Management of funds**

- (1) The Association must open an account with a financial institution from which all expenditure of the Association is made and into which all of the Association's revenue is deposited.
- (2) Subject to any restrictions imposed by a general meeting of the Association, the Board of Governance may approve expenditure on behalf of the Association.

- (3) The Board of Governance may authorise the Treasurer to expend funds on behalf of the Association (including by electronic funds transfer) up to a specified limit without requiring approval from the Board of Governance for each item on which the funds are expended.
- (4) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by two members of the Board or two members of the Executive Committee given authority under terms set by the Board of Governance from time to time.
- (5) All funds of the Association must be deposited into the financial account of the Association no later than 5 working days after receipt.
- (6) With the approval of the Board of Governance, the Treasurer may maintain a cash float provided that all money paid from or paid into the float is accurately recorded at the time of the transaction.

## **72 Financial records**

- (1) The Association must keep financial records that—
  - (a) correctly record and explain its transactions, financial position and performance; and
  - (b) enable financial statements to be prepared as required by the Act.
- (2) The Association must retain the financial records for 7 years after the transactions covered by the records are completed.
- (3) The Treasurer must keep in his or her custody, or under his or her control—
  - (a) the financial records for the current financial year; and
  - (b) any other financial records as authorised by the Board of Governance.

## **73 Financial statements**

- (1) For each financial year, the Board of Governance must ensure that the requirements under the Act relating to the financial statements of the Association are met.
- (2) Without limiting subrule (1), those requirements include—
  - (a) the preparation of the financial statements;
  - (b) if required, the review or auditing of the financial statements;
  - (c) the certification of the financial statements by the Board of Governance;
  - (d) the submission of the financial statements to the annual general meeting of the Association;
  - (e) the lodgement with the Registrar of the financial statements and accompanying reports, certificates, statements and fee.

## **PART 7—GENERAL MATTERS**

## **74 Common seal**

- (1) The Association may have a common seal.
- (2) If the Association has a common seal—
  - (a) the name of the Association must appear in legible characters on the common seal;
  - (b) a document may only be sealed with the common seal by the authority of the Board of Governance and the sealing must be witnessed by the signatures of two Board of Governance members;
  - (c) the common seal must be kept in the custody of the Secretary.

## **75 Registered address**

The registered address of the Association is—

- (a) the address determined from time to time by resolution of the Board of Governance; or
- (b) if the Board of Governance has not determined an address to be the registered address—the postal address of the Secretary.

## **76 Notice requirements**

- (1) Any notice required to be given to a member or a Board of Governance member under these Rules may be given—
  - (a) by handing the notice to the member personally; or
  - (b) by sending it by post to the member at the address recorded for the member on the register of members; or
  - (c) by email or facsimile transmission.
- (2) Subrule (1) does not apply to notice given under rule 60.
- (3) Any notice required to be given to the Association or the Board of Governance may be given—
  - (a) by handing the notice to a member of the Board of Governance; or
  - (b) by sending the notice by post to the registered address; or
  - (c) by leaving the notice at the registered address; or
  - (d) if the Board of Governance determines that it is appropriate in the circumstances—
    - (i) by email to the email address of the Association or the Secretary; or
    - (ii) by facsimile transmission to the facsimile number of the Association.

## **77 Custody and inspection of books and records**

- (1) Members may on request inspect free of charge—
  - (a) the register of members;
  - (b) the minutes of general meetings;
  - (c) subject to subrule (2), the financial records, books, securities and any other relevant document of the Association, including minutes of Board of Governance meetings.

### **Note**

See note following rule 18 for details of access to the register of members.

- (2) The Board of Governance may refuse to permit a member to inspect records of the Association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.
- (3) The Board of Governance must on request make copies of these rules available to members and applicants for membership free of charge.
- (4) Subject to subrule (2), a member may make a copy of any of the other records of the Association referred to in this rule and the Association may charge a reasonable fee for provision of a copy of such a record.
- (5) For purposes of this rule—

*relevant documents* means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of the Association and includes the following—

- (a) its membership records;
- (b) its financial statements;
- (c) its financial records;
- (d) records and documents relating to transactions, dealings, business or property of the Association.

## **78 Winding up and cancellation**

- (1) The Association may be wound up voluntarily by special resolution.
- (2) If the Association is wound up, any Surplus Assets must not be distributed to a member or a former member of the Association, unless that member or former member is a charity described in subrule (3).
- (3) To the extent applicable, if the Association's endorsement as a deductible gift recipient is revoked, any surplus of the following assets shall be transferred to another to one or more charities with charitable purpose(s) similar to, or inclusive of, the purpose(s) in Rule 2 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;
  - c. purpose of the organisation; and
  - d. money received by the organisation because of such gifts and contributions.
- (4) Subject to the Act and any other applicable Act, and any court order, any Surplus Assets that remain after the Association is wound up must be distributed to one or more charities:
  - a. With charitable purpose(s) similar to, or inclusive of, the purpose(s) in rule 2; and
  - b. which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the Association.
- (5) The decision as to the charity or charities to be given the Surplus Assets must be made by a Special Resolution of members at or before the time of winding up, and if the members do not make this decision, the Association may apply to the Supreme Court to make this decision under section 133 of the Act.

## **79 Alteration of Rules**

These Rules may only be altered by special resolution of a general meeting of the Association.

### **Note**

An alteration of these Rules does not take effect unless or until it is approved by the Registrar. If these Rules (other than rule 1, 2 or 3) are altered, the Association is taken to have adopted its own rules, not the model rules.