



Esperance Aged Care Facility

Quality Care Together

**Esperance Aged Care Facility
Inc.**

Constitution

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Schedule 1

1. PRELIMINARY

1.1 Name of Association

The name of the Association is Esperance Aged Care Facility Inc **Schedule 1, Item 1**

1.2 Objects of Association

The objects and purposes of the Association are: **Schedule 1, Item 2**

- 1.2.1 To promote and undertake or assist in promoting and undertaking charitable assistance for aged people.
- 1.2.2 To raise funds for the purpose of providing homes for aged people and to furnish and maintain such homes;
- 1.2.3 To arrange construction of such homes and premises as referred to herein;
- 1.2.4 To administer and arrange for the administration of such completed homes when ready for occupation;
- 1.2.5 To promote and assist the general good of aged people by assisting whenever and wherever possible the work of statutory authorities and voluntary organisations engaged in respect of the general good and welfare of aged and disabled people;
- 1.2.6 To promote and organise cooperation in the achievement of the above purposes and to that end, bring together in committee, representatives of the authorities and organisations engaged in the furtherance of the above objectives or of them;
- 1.2.7 To be registered as a charitable organisation.

1.3 Quorum for Board of Management Meetings **Schedule 1, Item 6(e)**

Any five (5) **Board of Management** Members constitute a quorum for the conduct of the business at a **Board of Management** Meeting.

1.4 Quorum for General Meetings **Schedule 1, Item 7**

Ten (10) per cent of Members personally present (being Members entitled to vote under these Rules at a General Meeting) will constitute a quorum for the conduct of business at a General Meeting.

1.5 Financial Year Schedule 1, Item 12

- (a) The Association's Financial Year, will be the period of 12 months commencing on each 01 July and ending on 30 June of each subsequent year.
- (b) The first Financial Year of the Association shall be the period ending on the next 30 June following incorporation.

2. INTERPRETATION

2.1 Definitions

In these Rules, unless the contrary intention appears:

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

“AGM” means the annual general meeting convened under rule 23.1;

“Board of Management” means the Management Committee required by the Act which is the body responsible for the management of the affairs of the Association;

“Board of Management meeting” means a meeting referred to in rule 14.1;

“Books of the Association” has the meaning given to it in section 3 of the Act and includes all of the registers; financial records, financial statements or financial reports, as each of those terms is defined in section 62 of the Act, however compiled, stored or recorded; minute books and documents and securities of the Association.

“By-laws” are additional arrangements or processes adopted by members by Ordinary Resolution of the Association to supplement these Rules. They do not form part of the Rules and are not required to be lodged with the Commissioner.

“Commissioner” means the person designated as the “Commissioner” from time to time under the Act;

“Financial Records” has the meaning given to it in section 62 of the Act and includes:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers;
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain:
 - (i) the methods by which financial statements are prepared; and
 - (ii) adjustments to be made in preparing financial statements;

“Financial Report” has the meaning given to it in sections 62 and 63 of the Act;

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

“Financial Year” has the meaning given to it in Rule 1.5;

“General Meeting” means a meeting of the association which all Members (including Associate Members) are invited to attend;

“Member” means a person (including a body corporate) who becomes a Member of the Association under these Rules;

“Ordinary Resolution” means a resolution to decide a question, matter or resolution at a General Meeting that is not a Special Resolution;

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

“Rules” mean these rules of the Association as amended from time to time under Rule 24.2;

“Special Resolution” is a resolution of the Association passed in accordance with rule 19.1;

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

- (a) the debts and liabilities of the Association; and
- (b) the costs, charges and expenses of winding up the Association,

but does not include books pertaining to the management of the Association;

“Tier 1 Association” has the meaning given to it in section 62 of the Act;

“Tier 2 Association” has the meaning given to it in section 62 of the Act;

“Tier 3 Association” has the meaning given to it in section 62 of the Act;

2.2 Notices

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

3. POWERS OF THE ASSOCIATION

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

- 3.1 To purchase, take on lease, or in exchange, hire or otherwise acquire any real or personal property or rights or privileges which the Association may think necessary or convenient.
- 3.2 To borrow money, with or without security, and on such conditions as the Board of Management shall think fit.
- 3.3 To acquire money and other property by donations, legacies or any other means which the Board of Management may deem fit.
- 3.4 To make, vary and revoke rules and regulations for the good order and management of the homes.
- 3.5 To appoint such trustees as may be necessary.
- 3.6 To decide conditions to be complied with by residents of the homes.
- 3.7 To delegate the task of assessing suitable applicants for residence at the Esperance Aged Care Facility to a specialist assessment team appointed by the Regional Director of the Health Department of WA. The Board of Management shall reserve the right to allocate priorities for admission where necessary or deny right of admission.
- 3.8 To appoint a General Manager and a Clinical Manager, or a person who may carry out the duty of both positions, for the supervision and management of the homes under the control and direction of the Board of Management.
- 3.9 To expend the funds of the Association in such manner as the Board of Management shall consider most beneficial for the purposes of the Association and to invest in the name of the Association such parts thereof as the Board of Management may think fit and to direct the sale or disposition of any such investments and to expend the proceeds of any such sale for the purposes of the Association.
- 3.10 To do all such things as are necessary, incidental or conducive to the attainment of the objects of the Association.

4. NOT FOR PROFIT

The property and income of the Association must be applied solely towards promoting the objects or purposes of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any Member, except in good faith in promoting those objects or purposes.

5. BECOMING A MEMBER

5.1 Minimum Number of Members

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

5.2 Qualifications for Membership Schedule 1, Item 3

- (a) Subject to rules 5.2(b) and (c) any person who supports the purposes of the Association is eligible to apply for membership.
- (b) The by-laws of the Association made under rule 25 may require members to hold specified educational, trade or professional qualifications;
- (c) The Association must comply with all legal and regulatory obligations that apply to the Association when assessing eligibility of an applicant for membership.

5.3 Applying for Membership

- (a) A person who wants to become a Member must:
 - (i) apply in writing on the form provided to the Association; and
 - (ii) be nominated for membership by a Member.
- (b) All application forms must be signed by the Applicant and the nominee.
- (c) The application form must specify the applicable class of membership.

5.4 Deciding Membership Applications

- (a) The Board of Management, at its next ordinary meeting, will consider and decide whether to approve or reject any membership application.
- (b) Subject to rule 5.4(c) applications will be considered and decided in the order they are received by the Association.
- (c) When considering a membership application, the Board of Management may seek clarification of any matter or further information in support of the application and may delay its decision to allow for that material to be provided and proceed to consider and decide other applications.
- (d) The Board of Management must not approve a membership application unless the Applicant:
 - (i) meets all the eligibility requirements under rule 5.2; and
 - (ii) applies under rule 5.3.
- (e) The Board of Management may refuse to accept a membership application even if the Applicant has applied in writing and complies with all the eligibility requirements under rule 5.2.

- (i) No applicant who has been refused membership of the Association shall be again proposed before the expiration of six months at least from the date of the meeting on which he was refused.
- (f) As soon as is practicable after the Board of Management has made a decision under rule 5.4(a), the Board of Management must notify the Applicant in writing of the outcome of their membership application but is not obliged to provide reasons for the decision.

5.5 Becoming a Member Schedule 1, Item 3

- (a) An Applicant becomes a Member if:
 - (i) the Applicant is eligible for membership under rule 5.2;
 - (ii) the Applicant applies in writing to the Association under rule 5.3;
 - (iii) the Board of Management approves the Applicant's application for membership; and
 - (iv) the Applicant pays any fees due under rules 9.1 and 9.2.
- (b) The Applicant immediately becomes a Member and is entitled to exercise all the rights and privileges of membership, including the right to vote (if applicable), and must comply with all of the obligations of Membership under these Rules, when rule 5.5(a) has been fulfilled.

5.6 Recording Membership in the Register

The Secretary must enter a person's name in the Register within 28 days after the person becomes a Member.

6. LIABILITY AND ENTITLEMENTS OF MEMBERS

6.1 Classes of Members

- (a) The membership of the Association consists of:
 - (i) ordinary Members; and
 - (ii) honorary Members;

The Board of Management may in its absolute discretion invite and appoint any of the following persons to be honorary Members of the Association:

Representatives of any statutory body, voluntary organisations or charitable or benevolent institutions having objects similar to those of the Association or whose functions may assist the Association

Any person whose knowledge or experience may be of assistance to the Association.

Any person who has performed any valuable voluntary service to the Association.

An honorary member shall not occupy any position on the Board of Management managing the Association (which term does not include subcommittees appointed by the Board of Management managing the Association),

The holder of honorary membership shall not be required to pay any membership fee after having been elected to honorary membership.

The Board of Management may in its absolute discretion terminate at any time by notice in writing the membership of an honorary member.

; and

(iii) Life Members.

The Board of Management has the power to reward any member for special services rendered to the Association by electing him a Life member.

The holder of life membership shall not be required to pay any membership fee after having been elected to life membership.

Life membership awards shall be limited to no more than two in any one year.

- (b) A person under the age of 15 years cannot be a Member.
- (c) No Member can belong to more than one class of membership.
- (d) An ordinary Member has all rights provided to Members under the Rules, including the right to vote, and other rights and benefits as determined by the Board of Management or by resolution of Members at a General Meeting.
- (e) An honorary or life Member has no right to vote, but has all other rights provided to a Member under the Rules and other rights and benefits as determined by the Board of Management or by resolution of Members at a General Meeting.
- (f) The maximum number of ordinary Members is unlimited.

6.2 **Membership Voting Rights of Members**

- (a) Each ordinary Member of the Association has one vote at a General Meeting of the Association.
- (b) Each ordinary Member of the Association that is a Body Corporate has one vote at a General Meeting of the Association.

6.3 Voting by Body Corporate

- (a) A Member which is a body corporate may appoint in writing a natural person, whether or not he or she is a Member, to represent it at a particular General Meeting or at all General Meetings.
- (b) A copy of the written appointment must be lodged with the Secretary.
- (c) A person appointed under rule 6.3(a) has authority to represent the body corporate as a Member:
 - (i) in the case of an appointment in respect of a particular General Meeting, until the conclusion of that General Meeting; or
 - (ii) otherwise, until the appointment is revoked by the body corporate and notice of the revocation is given to the Secretary.

6.4 Liability of Members

- (a) A Member is only liable for their outstanding membership fees payable under rules 9.1 and 9.2, if any.
- (b) Subject to rule 6.4(a), a Member is not liable, by reason of the person's Membership, for the liabilities of the Association or the cost of winding up the Association.
- (c) Rule 6.4(b) does not apply to liabilities incurred by or on behalf of the Association by the Member before incorporation.

6.5 Payment to Members

- (a) Subject to rule 6.5(b), no portion of the income or property of the Association may be paid directly or indirectly, by way of dividend, bonus or otherwise to the Members.
- (b) Rule 6.5(a) does not prevent:
 - (i) the payment in good faith of remuneration to any officer, employee or Member in return for any services actually rendered to the Association or for goods supplied in the ordinary and usual course of business;
 - (ii) the payment of interest at a rate not exceeding the prevailing market rate published by the Reserve Bank of Australia as the "Cash Rate Target" from time to time on money borrowed from any Member;
 - (iii) the payment of reasonable and proper rent by the Association to a Member for premises leased by the Member to the Association; or
 - (iv) the reimbursement of expenses incurred by any Member or any Committee Member on behalf of the Association.

6.6 **Membership Entitlements not Transferable**

A right, privilege or obligation that a person has because he or she is a Member of the Association:

- (a) is not capable of being transferred to any other person; and
- (b) ends when the person's membership ceases.

7. **CEASING TO BE A MEMBER**

7.1 **Ending Membership Schedule 1, Item 3**

- (a) A person's membership ends, if the person:
 - (i) dies;
 - (ii) ceases to be a Member under rule 9.2(d);
 - (iii) resigns as a Member under rule 7.2; or
 - (iv) is expelled from the Association under rule 7.3.
- (b) For a period of one year after a person's membership ends, the Secretary must keep a record of:
 - (i) the date on which a person ceases to be a Member under rule 7.1(a); and
 - (ii) the reason why the person ceases to be a Member.

7.2 **Resigning as a Member**

- (a) A Member who has paid all amounts payable by the Member to the Association in respect of their membership, may resign from membership by giving written notice of their resignation to the Secretary.
- (b) The Member resigns:
 - (i) at the time the Secretary receives the notice; or
 - (ii) if a later time is stated in the notice, at that later time.
- (c) Any Member who resigns from the Association remains liable to pay to the Association any outstanding fees which may be recovered as a debt due to the Association by the Member.

7.3 **Suspending or Expelling Members**

- (a) The Board of Management may, by resolution, suspend or expel a Member from membership if:
 - (i) the Member refuses or neglects to comply with these Rules; or

- (ii) the Member's conduct or behaviour is detrimental to the interests of the Association.
- (b) The Board of Management must hold a Board of Management Meeting to decide whether to suspend or expel a Member.
- (c) The Secretary must, not less than 28 days before the Board of Management Meeting referred to in rule 7.3(b), give written notice to the Member:
 - (i) of the proposed suspension or expulsion and the grounds on which it is based;
 - (ii) of the date, place and time of the Board of Management Meeting;
 - (iii) that the Member, or the Member's representative, may attend the Board of Management Meeting; and
 - (iv) that the Member, or the Member's representative, may address the Board of Management at the meeting and will be given a full and fair opportunity to state the Member's case orally, or in writing, or both.
- (d) At the Board of Management Meeting referred to in rule 7.3(b) the Board of Management must:
 - (i) give the Member, or the Member's representative, a full and fair opportunity to state the Member's case orally;
 - (ii) give due consideration to any written statement submitted by the Member; and
 - (iii) determine whether or not the Member should be:
 - A. expelled from the Association; or
 - B. suspended from membership, and if so, the period that the Member should be suspended from membership.
- (e) Once the Board of Management has decided to suspend or expel a Member under rule 7.3(d), the Member is immediately suspended or expelled from membership.
- (f) The Secretary must inform the Member in writing of the decision of the Board of Management and the reasons for the decision, within 7 days of the Board of Management Meeting referred to in rule 7.3(d).

7.4 Right of Appeal of against Suspension or Expulsion

- (a) If a Member is suspended or expelled under rule 7.3, the person may appeal the Board of Management's decision by giving written notice to the Secretary within 14 days of receiving notice of the Board of Management's decision under rule 7.3(f) requesting the appointment of a mediator under rule 28.2(c)

7.5 Reinstatement of a Member

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

7.6 When a Member is Suspended

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

8. MEMBERSHIP REGISTER

8.1 Register of Members Schedule 1, Item 4

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

8.2 **Inspecting the Register**

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

8.3 **Copy of the Register**

- (a) A Member may make a request in writing for a copy of the Register.
- (b) The Board of Management may require a Member who requests a copy of the Register to provide a statutory declaration setting out the purpose of the request and declaring that the purpose is connected with the affairs of the Association.
- (c) The Association may charge a reasonable fee to the Member for providing a copy of the Register, the amount to be determined by the Board of Management from time to time.

8.4 **When Using the Information in the Register is Prohibited**

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

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

9. **MEMBERSHIP FEES Schedule 1, Item 5**

9.1 **Entrance Fee**

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

9.2 **Annual Membership Fee**

- (a) Membership shall be from the first day of October of any year until the thirtieth day of September in the succeeding year.

- (b) The Board of Management may from time to time determine the amount of the annual membership fee, if any, to be paid by each Member or each class of Members.
- (c) Each Member must pay the Member's annual membership fee, determined under rule 9.2(a), to the Treasurer, or a person authorised by the Board of Management to receive payments, on or before the first day of November in each year.
- (d) If a Member pays the annual membership fee within 3 months after the due date, the Member retains all the rights and privileges of a Member for the purposes of these Rules during that time, including the right to vote.
- (e) Subject to rule 9.2(f), if a person fails to pay the annual Membership fee within 3 months after the due date, the person ceases to be a Member.
- (f) If a person ceases to be a Member under rule 9.2(e), and subsequently pays to the Association all the Member's outstanding fees, the Board of Management may, if it thinks fit, reinstate the Member's rights and privileges from the date on which the outstanding fees are paid, including the right to vote.

10. **POWERS AND COMPOSITION OF THE BOARD OF MANAGEMENT**

10.1 **Powers of the Board of Management Schedule 1, Item 6**

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

10.2 **Board of Management Members**

- (a) The Board of Management shall consist of nine (9) Members:
 - (i) four (4) office holders of the Association; and
 - (ii) five (5) other Members.

- (b) The office holders of the Association are:
 - (i) the Chairperson;
 - (ii) the Deputy-Chairperson;
 - (iii) the Secretary; and
 - (iv) the Treasurer.
- (c) A Committee Member must be:
 - (i) a natural person;
 - (ii) over 18 years in age; and
 - (iii) a Member.
- (d) No person shall be entitled to hold more than one of the positions set out in rule 10.2(b) at any time.
- (e) No person shall be entitled to hold a position on the Board of Management if the person has been convicted of, or imprisoned in the previous five years for:
 - (i) an indictable offence in relation to the promotion, formation or management of a body corporate;
 - (ii) an offence involving fraud or dishonesty punishable by imprisonment for a period of not less than three months; or
 - (iii) an offence under Part 4 Division 3 or section 127 of the Act;
 unless the person has obtained the consent of the Commissioner.
- (f) No person shall be entitled to hold a position on the Board of Management if the person is, according to the *Interpretation Act* section 13D, a bankrupt or a person whose affairs are under insolvency laws unless the person has obtained the consent of the Commissioner.

11. **ROLE AND RESPONSIBILITIES OF BOARD OF MANAGEMENT MEMBERS**

11.1 **Obligations of the Board of Management**

- (a) The Board of Management must take all reasonable steps to ensure the Association complies with its obligations under the Act and these Rules.

11.2 **Responsibilities of Board of Management Members**

- (a) A Board of Management Member must exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise in the circumstances.

- (b) A Board of Management Member must exercise his or her powers and discharge his or her duties in good faith in the best interests of the Association and for a proper purpose.
- (c) A Board of Management Member or former Board of Management Member must not improperly use information obtained because he or she is a Board of Management Member to:
 - (i) gain an advantage for himself or herself or another person; or
 - (ii) cause detriment to the Association.
- (d) A Board of Management Member or former Board of Management Member must not improperly use his or her position to:
 - (i) gain an advantage for himself or herself or another person; or
 - (ii) cause detriment to the Association.
- (e) A Board of Management Member having any material personal interest in a matter being considered at a Board of Management Meeting must:
 - (i) as soon as he or she becomes aware of that interest, disclose the nature and extent of his or her interest to the Board of Management;
 - (ii) disclose the nature and extent of the interest at the next General Meeting of the Association; and
 - (iii) not be present while the matter is being considered at the Board of Management Meeting or vote on the matter.
- (f) Rule 11.2(e) does not apply in respect of a material personal interest that:
 - (i) exists only because the Board of Management Member belongs to a class of persons for whose benefit the Association is established; or
 - (ii) the Board of Management Member has in common with all, or a substantial proportion of, the members of the Association.
- (g) The Secretary must record every disclosure made by a Board of Management Member under rule 11.2(e) in the minutes of the Board of Management Meeting at which the disclosure is made.
- (h) No Board of Management Member shall make any public statement or comment or cause to be published any words or article concerning the conduct of the Association unless the person is authorised by the Board of Management to do so and such authority is recorded in the minutes of the Board of Management Meeting.

11.3 Chairperson

The Chairperson:

- (a) must consult with the Secretary regarding the business to be conducted at each Board of Management Meeting and each General Meeting;
- (b) may convene special meetings of the Board of Management under rule 14.1(c);
- (c) may preside over Board of Management Meetings under rule 14.3;
- (d) may preside over General Meetings under rule 17.4; and
- (e) must ensure that the minutes of a General Meeting or Board of Management Meeting are reviewed and signed as correct under rule 20.1(c).

11.4 **Secretary**

The Secretary must:

- (a) co-ordinate the correspondence of the Association;
- (b) consult with the Chairperson about all business to be conducted at meetings and convene General Meetings and Board of Management Meetings, including preparing the notices of meetings and of the business to be conducted at each meeting;
- (c) keep and maintain in an up to date condition the rules of the Association as required by rule 24.1 and any by-laws of the Association made in accordance with rule 25;
- (d) maintain the register of the Members, referred to in rule 8.1;
- (e) maintain the record of office holders of the Association, referred to in rule 11.6;
- (f) ensure the safe custody of the Books (with the exception of the Accounting Records) of the Association under rule 27.1;
- (g) keep full and correct minutes of Board of Management Meetings and General Meetings; and
- (h) perform any other duties as are imposed by these Rules or the Association on the Secretary.

11.5 **Treasurer**

The Treasurer must:

- (a) ensure all moneys payable to the Association are collected, and that receipts are issued for those moneys in the name of the Association;
- (b) ensure the payment of all moneys referred to in rule 11.5(a) into the account or accounts of the Association as the Board of Management may from time to time direct;

- (c) ensure timely payments from the funds of the Association with the authority of a General Meeting or of the Board of Management;
- (d) ensure that the Association complies with the account keeping requirements in Part 5 of the Act;
- (e) ensure the safe custody of the Financial Records of the Association and any other relevant records of the Association;
- (f) Coordinate the preparation of the Financial Report of the Association prior to its submission to the annual general meeting of the Association;
- (g) assist the reviewer or auditor (if any) in performing their functions; and
- (h) perform any other duties as are imposed by these Rules or the Association on the Treasurer.

11.6 Record of Office Holders

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

11.7 Inspecting the Record of Office Holders

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

12. APPOINTING BOARD OF MANAGEMENT MEMBERS Schedule 1, Item 6(a)

12.1 Appointment to the Board of Management

Board of Management Members are appointed to the Board of Management by:

- (a) election at an AGM; or

- (b) appointment to fill a casual vacancy under rule 13.1(b).

12.2 **Nominating for Membership of the Board of Management**

- (a) A Member who wishes to be a Board of Management Member must be nominated by two (2) other Members as a candidate for election.
- (b) Nominations for election to the Board of Management shall close at least 28 days before the AGM.
- (c) The Secretary must send a notice calling for nominations for election to the Board of Management and specifying the date for the close of nominations to all Members at least 14 days before the date for the close of nominations.
- (d) The nomination for election must be:
 - (i) in writing; and
 - (ii) delivered to the Secretary on or before the date for the close of nominations.
- (e) A Member may only be nominated for one position on the Board of Management prior to the AGM.
- (f) If a nomination for election to the Board of Management is not made in accordance with Rules 12.2(a)-(e) the nomination is to be deemed invalid and the Member will not be eligible for election unless rule 12.3(c) takes effect.

12.3 **Electing Board of Management Members**

- (a) If the number of valid nominations received under rule 12.2 is equal to the number of vacancies to be filled for the relevant position on the Committee, the Member nominated shall be deemed to be elected at the AGM.
- (b) If the number of valid nominations exceeds the number of vacancies to be filled for the relevant position on the Board of Management, elections for the positions must be conducted at the AGM
- (c) If there are not enough valid nominations to fill the number of vacancies for the relevant positions on the Board of Management, the candidates nominated (if any) shall be deemed to be elected and further nominations may be received from the floor of the AGM.
- (d) Where the number of nominations from the floor exceeds the remaining number of vacancies on the Board of Management, elections for those positions must be conducted as per Rule 12.3f.

- (e) If an insufficient number of nominations are received from the floor for the number of vacancies on the Board of Management that remain, each relevant position on the Board of Management is declared vacant by the person presiding at the AGM and rule 13.1(b) applies.
- (f) The elections for office holders or ordinary Board of Management Member are to be conducted at the AGM in the following manner:
 - (i) The Secretary shall give to each member of the Association a ballot paper which shall be so printed as to show clearly that there are two/three vacancies to be filled and the full names of the candidates;
 - (ii) Votes shall be cast by crossing out the name or names of the candidate or candidates for whom he does not wish to vote, leaving the same number of names as there are vacancies;
 - (iii) The Annual General Meeting shall appoint scrutineers who shall proceed to open the ballot papers after they have been thoroughly mixed and then count them and then report the result of the count to the Chairman of the meeting. The candidate or candidates receiving the most votes shall be declared elected to the office or offices subject of the election. A ballot paper may only be completed personally by the member to whom it is sent or given;
 - (iv) When in the course of an election and as often as it shall happen there are two or more candidates with an equal number of votes and the number of vacancies is less than the said candidates, a further ballot or ballots shall be taken immediately upon which the members present shall vote to determine which of the said candidates shall be elected to fill the vacancies.
- (g) A list of candidates, names in alphabetical order, with the names of the Members who nominated each candidate, must accompany the notice of the AGM.

12.4 Voting in Elections for Membership of the Board of Management

- (a) Subject to rule 19.3(e), each Member present and eligible to vote at the AGM may vote for one candidate for each vacant position on the Board of Management
- (b) A Member who nominates for election or re-election may vote for himself or herself.

12.5 Term of Office of Board of Management Members Schedule 1, Item 6(b)

- (a) The Board of Management Members appointed on incorporation of the Association will hold office until the conclusion of the first AGM of the Association and will be eligible for re-election.

- (b) At each AGM of the Association, the appointment of the Board of Management Members at the AGM will be for a maximum term of 3 years
- (c) Subject to rule 12.5(a), a Board of Management Member's term will commence on the date of his or her:
 - (i) election at an AGM; or
 - (ii) appointment to fill a casual vacancy that arises under rule 13.1 (b).
- (d) All retiring Board of Management Members are eligible, on nomination under rule 12.2, for re-election.

13. CEASING TO BE A MEMBER OF THE BOARD OF MANAGEMENT

13.1 Vacant Positions on the Board of Management Schedule 1, Items 6(c) and 6(d)

- (a) A casual vacancy occurs in the office of a Board of Management Member and that office becomes vacant if the Board of Management Member:
 - (i) dies;
 - (ii) ceases to be a Member;
 - (iii) becomes disqualified from holding a position under rule 10.2 (f) or (g) as a result of bankruptcy or conviction of a relevant criminal offence;
 - (iv) becomes permanently incapacitated by mental or physical ill-health;
 - (v) resigns from office under rule 13.2;
 - (vi) is removed from office under rule 13.3; or
 - (vii) is absent from more than:
 - A. three consecutive Board of Management Meetings without a good reason; or
 - B. three Board of Management Meetings in the same Financial Year without tendering an apology to the person presiding at each of those Board of Management Meetings,

where the Member received notice of the meetings, and the Board of Management has resolved to declare the office vacant.

- (b) If a position on the Board of Management is declared vacant under rule 12.3(e), or there is a casual vacancy within the meaning of rule 13.1 (a), the continuing Board of Management Members may:
 - (i) appoint a Member to fill that vacancy until the conclusion of the next AGM; and

- (ii) subject to rule 0, act despite the vacant position on the Board of Management
- (c) If the number of Board of Management Members is less than five (5) as the quorum for Board of Management Meetings, the continuing Board of Management Members may act only to:
 - (i) increase the number of Members on the Board of Management to the number required for a quorum; or
 - (ii) convene a General Meeting of the Association.

13.2 Resigning from the Board of Management

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

13.3 Removal from Board of Management

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

14. BOARD OF MANAGEMENT MEETINGS

14.1 Meetings of the Board of Management

- (a) The Board of Management shall meet at least monthly on a date to be agreed upon by the majority of the Members of the Board of Management
- (b) The Board of Management is to determine the place and time of all Board of Management Meetings.
- (c) Special meetings of the Board of Management may be convened under rule 14.2 by:
 - (i) the Chairperson; or
 - (ii) any two Board of Management Members.

14.2 Notice of Board of Management Meetings

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

14.3 Chairing at Board of Management Meetings

- (a) The Chairperson or, in the Chairperson's absence, the Deputy-Chairperson is to preside as chairperson of each Board of Management Meeting.
- (b) If the Chairperson and the Deputy-Chairperson are absent or unwilling to act, the remaining Board of Management Members must choose one of their number to preside as chairperson at the Board of Management Meeting.

14.4 Procedure of the Board of Management Meeting Schedule 1, Item 6(e) and (f)

- (a) The quorum for a Board of Management Meeting is specified at clause 1.3. The Board of Management cannot conduct business unless a quorum is present.

- (b) If, within half an hour of the time appointed for the meeting, a quorum is not present the meeting is to stand adjourned to the same time, day and place in the following week.
- (c) If at a meeting adjourned under rule 14.4(b), a quorum is not present within half an hour of the time appointed for the meeting, the Board of Management Members personally present will constitute a quorum.
- (d) Board of Management Meetings may take place:
 - (i) where the Board of Management Members are physically present together; or
 - (ii) where the Board of Management Members are able to communicate by using any technology that reasonably allows the Board of Management Member to participate fully in discussions as they happen in the Board of Management Meeting and in making decisions, provided that the participation of the Member in the Board of Management Meeting must be made known to all other Members.
- (e) A Board of Management Member who participates in a meeting as set out in rule 14.4(d)(ii):
 - (i) is deemed to be present at the Board of Management Meeting; and
 - (ii) continues to be present at the meeting for the purposes of establishing a quorum,until the Board of Management Member notifies the other Board of Management Members that he or she is no longer taking part in the Board of Management Meeting.
- (f) Subject to these Rules, the Board of Management Members present at the Board of Management Meeting are to determine the procedure and order of business to be followed at a Board of Management Meeting.
- (g) All Board of Management Members have the right to attend and vote at Board of Management Meetings.
- (h) All Members, or other guests, may attend Board of Management Meetings if invited by the Board of Management but the person shall not have any right to comment without invitation, or any right to vote, or to be provided with copies of any agenda, minutes of meetings, or documents presented to such meetings.
- (i) The Secretary or a person authorised by the Board of Management from time to time must keep minutes of the resolutions and proceedings of all Board of Management Meetings together with a record of the names of persons present at each meeting.

14.5 **Voting at Board of Management Meetings**

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

14.6 **Acts not Affected by Defects or Disqualifications**

Any act performed by the Board of Management, a sub-committee or a person acting as a Board of Management Member is deemed to be valid even if the act was performed when:

- (a) there was a defect in the appointment of a Board of Management Member, sub-committee or person holding a subsidiary office; or
- (b) a Board of Management Member, a sub-committee member or a person holding a subsidiary office was disqualified from being a Member.

15. **REMUNERATION OF BOARD OF MANAGEMENT MEMBERS Schedule 1, item 6(g)**

- (a) The Association may pay a Board of Management Member's travelling and other expenses as properly incurred:
 - (i) in attending Board of Management Meetings or sub-committee meetings;
 - (ii) in attending any General Meetings of the Association; and
 - (iii) in connection with the Association's business.
- (b) Board of Management Members must not receive any remuneration for their services as Board of Management Members other than as described at rule 15(a).

16. **SUB-COMMITTEES AND DELEGATION**

16.1 **Appointment of Sub-Committee**

- (a) The Board of Management may appoint one or more sub-committees as considered appropriate by the Board of Management from time to time to assist with the conduct of the Association's operations.

- (b) Sub-committees may comprise (in such numbers as the Board of Management determines) Members and non-members.
- (c) Subject to these Rules, the sub-committee members present at the sub-committee meeting are to determine the procedure and order of business to be followed at the sub-committee meeting.

16.2 Delegation by Board of Management to Sub-Committee

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

16.3 Delegation to Subsidiary Offices

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

17. GENERAL MEETINGS

17.1 Procedure for General Meetings Schedule 1, Item 7

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

- (ii) continues to be present at the meeting for the purposes of establishing a quorum,

until the Member notifies the other Members that he or she is no longer taking part in the General Meeting.

17.2 Quorum for General Meetings Schedule 1, Item 7

- (a) The Quorum for General Meetings is specified in rule 1.4.
- (b) Subject to rules 17.2(c) and (d), no business is to be conducted at a General Meeting unless a quorum of Members entitled to vote under these Rules is present at the time when the meeting is considering that item.
- (c) If, within half an hour of the time appointed for the commencement of a General Meeting, a quorum is not present:
 - (i) in the case of a Special General Meeting, the meeting lapses; or
 - (ii) in the case of an AGM, the meeting is to stand adjourned to:
 - A. the same time and day in the following week; and
 - B. the same place unless another place is specified by the Chairperson at the time of the adjournment or by written notice to the Members given before the day to which the meeting is adjourned.
- (d) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the commencement of the meeting, the Members present are to constitute a quorum.

17.3 Notice of General Meetings and Motions Schedule 1, Items 8 & 9

- (a) The Secretary must give at least:
 - (i) 14 days' notice of a General Meeting to each Member, or
 - (ii) 21 days' notice of a General Meeting to each Member if a Special Resolution is proposed to be moved at the General Meeting.
- (b) The notice convening a General Meeting must specify:
 - (i) the place, date and time of the meeting; and
 - (ii) the particulars and order of the business to be conducted at the meeting.
- (c) The notice convening a General Meeting or any notice of motion must be issued in the manner prescribed by rule 2.2.

17.4 **Presiding Member**

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

17.5 **Adjournment of General Meetings**

- (a) The person presiding over a General Meeting, at which a quorum is present, may adjourn the meetings from time to time and place to place with the consent of a majority of Members present at the meeting.
- (b) No business is to be conducted at an adjourned meeting other than the unfinished business from the meeting that was adjourned.
- (c) When a General Meeting is adjourned for 14 days or more, the Secretary must give notice of the adjourned meeting in accordance with rules 2.2 and 17.1 as if that General Meeting was a new General Meeting.

18. **SPECIAL GENERAL MEETINGS**

18.1 **Special General Meeting Schedule 1 Item 10**

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

18.2 **Request for Special General Meeting**

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

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

18.3 **Failure to Convene Special General Meeting**

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

the Board of Management and the Association must pay the reasonable expenses of convening and holding the Special General Meeting.

19. **MAKING DECISIONS AT GENERAL MEETINGS**

19.1 **Special Resolutions**

- (a) A Special Resolution must be moved at a General Meeting where notice of the Special Resolution has been given under rule 19.1(c).
- (b) A Special Resolution of the Association is required to:
 - (i) amend the name of the Association;
 - (ii) amend the Rules, under rule 24.2;
 - (iii) affiliate the Association with another body;
 - (iv) transfer the incorporation of the Association;
 - (v) amalgamate the Association with one or more other incorporated associations;
 - (vi) voluntarily wind up the association;
 - (vii) cancel incorporation; or
 - (viii) request that a statutory manager be appointed.
- (c) Notice of a Special Resolution must:
 - (i) be in writing;
 - (ii) include the place, date and time of the meeting;
 - (iii) include the intention to propose a Special Resolution;
 - (iv) set out the wording of the proposed Special Resolution; and
 - (v) be given in accordance with rule 2.2.
- (d) If notice is not given in accordance with rule 19.1(c), the Special Resolution will have no effect.
- (e) A Special Resolution must be passed at a General Meeting at which there is a quorum and be supported by the votes of not less than three-fourths of the Members present, in person or by proxy, and eligible to cast a vote at the meeting.

19.2 **Ordinary Resolutions**

Subject to these Rules, a majority of votes will determine an Ordinary Resolution.

19.3 **Voting at meetings**

- (a) Subject to these Rules, each ordinary Member has one vote at a General Meeting of the Association.
- (b) A person casts a vote at a meeting either by:
 - (i) voting at the meeting either in person or through the use of technology as under rule 17.1(a)(ii); or
 - (ii) by proxy.
- (c) In the case of an equality of votes at a General Meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- (d) A Member or their proxy is not entitled to vote at any General Meeting of the Association unless all money due and payable by the Member or their proxy to the Association has been paid in accordance with rules 9.1 and 9.2.
- (e) A Member is only entitled to vote at a General Meeting if the Member's name is recorded in the Register as at the date the notice of the General Meeting was sent out under rule 17.3.

19.4 **Proxies**

- (a) Each Member is entitled to appoint in writing, a natural person who is also a Member of the Association to be the Member's proxy, and to attend and vote on the Member's behalf at any General Meeting of the Association.
- (b) Written notice of the proxy must be given to the Secretary before the commencement of the meeting in respect of which the proxy is appointed.
- (c) No Member may hold more than five proxies.

19.5 **Manner of Determining Whether Resolution Carried**

- (a) Unless a Poll is demanded under rule 19.6, if a question arising at a General Meeting of the Association is determined by general agreement or a show of hands, a declaration must be made by the chairperson of the General Meeting that the resolution has been:
 - (i) carried unanimously;
 - (ii) carried by a particular majority; or
 - (iii) lost.

- (b) If the declaration relates to a Special Resolution, then subject to rule 19.1(c), the declaration should state that a Special Resolution has been determined.
- (c) The declaration made under rule 19.5(a) must be entered into the minute book of the Association.
- (d) The entry in the minute book of the Association under rule 19.5(c) is evidence of the fact that the resolution has been determined, without proof of the number or proportion of the votes recorded in favour of or against that resolution.

19.6 Poll at General Meetings

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

20. MINUTES OF MEETINGS

20.1 Minutes of Meetings

- (a) The Secretary or a person authorised by the Board of Management from time to time must keep minutes of the resolutions and proceedings of all General Meetings and Board of Management Meetings together with a record of the names of persons present at each meeting.
- (b) The minutes are to be taken and then to be entered within 30 days after the holding of each meeting, into an electronic minute folder kept for that purpose.

- (c) The Chairperson must ensure that the minutes of a General Meeting or Board of Management Meeting under rule 20.1(a) are reviewed and signed as correct by:
 - (i) the chairperson of the General Meeting or Board of Management Meeting to which those minutes relate; or
 - (ii) the chairperson of the next succeeding General Meeting or Board of Management Meeting.
- (d) When minutes have been entered and signed as correct under this rule, they are, until the contrary is proved, evidence that:
 - (i) the General Meeting or Board of Management Meeting to which they relate was duly convened and held;
 - (ii) all proceedings recorded as having taken place at the General Meeting or Board of Management Meeting did in fact take place at the meeting; and
 - (iii) all appointments or elections purporting to have been made at the meeting have been validly made.
- (e) The minutes of General Meetings may be inspected by a Member under rule 27.2.
- (f) The minutes of Board of Management Meetings may be inspected by a Member under rule 27.2 unless the Board of Management determines that the minutes of Board of Management Meetings generally, or the minutes of a specific Board of Management Meeting are not to be available for inspection.

21. FUNDS AND ACCOUNTS

21.1 Control of Funds Schedule 1, Item 11

- (a) The funds of the Association must be kept in accounts in the name of the Association in an approved deposit taking financial institution determined by the Board of Management.
- (b) The funds of the Association are to be used in pursuance of the objects of the Association.
- (c) All payments up to \$5 000 by cheques, drafts, bills of exchange, promissory notes, other negotiable instruments or electronic transfer of funds from the Association must be signed and countersigned by the General Manager and the Clinical Services Manager or signed by the General Manager or the Clinical Services Manager and countersigned by a member of the Administrative staff.
- (d) Any non budgeted payments over \$5 000 shall be signed by one Board of Management Member and countersigned by the General Manager or Clinical Services Manager.

- (e) All expenditure above the maximum amount set by the Board of Management from time to time must be approved or ratified at a Board of Management Meeting.

21.2 **Source of Association Funds**

- (a) The funds of the Association may be derived from entrance fees and annual membership fees of Members, donations, fund raising activities, grants, interest, and any other sources approved by the Board of Management.
- (b) The Association must, as soon as practicable:
 - (i) deposit all money received by the Association, to the credit of the Association's bank accounts, without deduction; and
 - (ii) after receiving any money, issue an appropriate receipt.

21.3 **Financial Records**

- (a) The Association must keep Financial Records that:
 - (i) correctly record and explain its transactions, financial position and performance; and
 - (ii) enable true and fair financial statements to be prepared in accordance with Part 5 of the Act.
- (b) The Association must retain its Financial Records for at least 7 years after the transactions covered by the records are completed.

21.4 **Financial Statements and Financial Reports**

- (a) For each financial year, the Association must ensure that the requirements under Part 5 of the Act are met.
- (b) Without limiting subrule (a), as a Tier 3 Association, those requirements include—
 - (i) the preparation of the Financial Report;
 - (ii) the review or auditing of the Financial Report;
 - (iii) the presentation of the Financial Report to the annual general meeting of the Association and a copy of the auditor's report; and
 - (iv) the lodgement of the annual return with the Commissioner.

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

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

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

22. **FINANCIAL YEAR OF THE ASSOCIATION**

The financial year of the association is at rule 1.5.

23. **ANNUAL GENERAL MEETINGS**

23.1 **Annual General Meeting Schedule 1, Item 13**

- (a) Subject to rules 23.1(b) and 23.1(c), the Association must convene an AGM each calendar year:
 - (i) within 6 months after the end of the Association's Financial Year; or
 - (ii) within a longer period as the Commissioner may allow.
- (b) The Association may hold its first AGM at any time within the period of 18 months after incorporation under the Act.
- (c) If the Association requires the approval from the Commissioner to hold its AGM within a longer period under rule 23.1(a)(ii), the Secretary must apply to the Commissioner no later than four months after the end of the Association's Financial Year.

23.2 **Notice of AGM**

The notice convening an AGM must specify that it is the AGM of the Association and otherwise must comply with rules 2.2 and 17.3 (as applicable).

23.3 **Business to be Conducted at AGM**

- (a) Subject to rule 23.1, the AGM of the Association is to be convened on a date, time and place as the Committee decides.
- (b) At each AGM of the Association, the Association:

- (i) must confirm the minutes of the last preceding AGM and of any Special General Meeting held since that meeting if the minutes of that Special General Meeting have not yet been confirmed;
- (ii) must receive the Financial Report of the Association for the preceding Financial Year;
- (iii) must appoint or remove a reviewer or auditor in accordance with the Act;
- (iv) must present a copy of the report of the review or the auditor's report to the Association; and
- (v) must elect or appoint the office holders and ordinary Members of the Board of Management

24. RULES OF THE ASSOCIATION

24.1 Rules of the Association

- (a) These Rules bind every Member and the Association and each Member agrees to comply with these Rules.
- (b) The Association must provide, free of charge, a copy of the Rules in force, at the time Membership commences, to each person who becomes a Member under rule 5.5.
- (c) The Association must keep a current copy of the Rules.

24.2 Amendment of Rules, Name and Objects Schedule 1, Item 14

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

does not take effect until the required documents are lodged with the Commissioner under rule 24.2(b) and the approval of the Commissioner is given in writing.

25. BY-LAWS OF THE ASSOCIATION

25.1 The Members of the Association may make, amend and repeal by-laws for the management of the Association by Ordinary Resolution at a General Meeting provided that the by-laws are not inconsistent with the Rules or the Act.

25.2 The by-laws made under rule 25.1:

- (a) Do not form part of the Rules;
- (b) May make provision for:
 - (i) classes of Membership and the rights and obligations that apply to each class of Membership;
 - (ii) requirements for financial reporting, financial accountability or audit of accounts in addition to those prescribed by the Act and the Rules;
 - (iii) restrictions on the powers of the Committee including the power to dispose of assets;
 - (iv) a requirement for members to hold a specified educational, trade or professional qualification; and
 - (v) any other matter that the Association considers necessary or appropriate; and
- (c) Must be available for inspection by Members.

26. AUTHORITY REQUIRED TO BIND ASSOCIATION

26.1 Executing Documents

- (a) The Association may execute a document without using a common seal if the document is signed by:
 - (i) any two Members of the Board of Management; or
 - (ii) one Member of the Board of Management and a person authorised by the Members of the Board of Management..

26.2 Use of the Common Seal Schedule 1, Item 15

- (a) If the Association has a common seal on which its corporate name appears in legible characters:

- (i) the Secretary or any other person as the Board of Management from time to time decides must provide for its safe custody; and
 - (ii) it must only be used under resolution of the Board of Management.
- (b) The Association executes a document with its common seal, if the fixing of the seal is witnessed by:
- (i) any two Members of the Board of Management ; or
 - (ii) one Member of the Board of Management and a person authorised by the Board of Management .
- (c) Every use of the common seal must be recorded in the Board of Management's minute book.

27. THE ASSOCIATION'S BOOKS AND RECORDS

27.1 Custody of the Books of the Association Schedule 1, Item 16

- (a) Except as otherwise decided by the Board of Management from time to time, the Secretary must keep in his or her custody or under his or her control all of the Books of the Association with the exception of the Financial Records which, except as otherwise directed by the Board of Management from time to time, are to be kept under the custody or control of the Treasurer.
- (b) The Books of the Association must be retained for at least 7 years.

27.2 Inspecting the Books of the Association Schedule 1, Item 17

- (a) Subject to these rules, and in particular rule 20.1 (f), a Member is able to inspect the Books of the Association free of charge at such time and place as is mutually convenient to the Association and the Member.
- (b) A Member must contact the Secretary to request to inspect the Books of the Association.
- (c) The Member may copy details from the Books of the Association but has no right to remove the Books of the Association for that purpose.

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

- (a) A Member must not use or disclose information in the Books of the Association except for a purpose:
 - (i) that is directly connected with the affairs of the Association; or
 - (ii) related to the provision of the information to the Commissioner in accordance with a requirement of the Act.

27.4 **Returning the Books of the Association**

- (a) Outgoing Members of the Board of Management are responsible for transferring all relevant assets and Books of the Association to the new Board of Management within 14 days of ceasing to be a Member of the Board of Management

28. **RESOLVING DISPUTES Schedule 1, item 18**

28.1 **Disputes Arising under the Rules**

- (a) This rule applies to:
 - (i) Disputes between Members; and
 - (ii) Disputes between the Association and one or more Membersthat arise under the rules or relate to the rules of the Association.
- (b) In this rule "Member" includes any former Member whose membership ceased not more than six months before the dispute occurred.
- (c) The parties to a dispute must attempt to resolve the dispute between themselves within 14 days of the dispute coming to the attention of each party.
- (d) If the parties are unable to resolve the dispute, any party to the dispute may initiate a procedure under this rule by giving written notice to the Secretary of the parties to, and details of, the dispute.
- (e) The Secretary must convene a Meeting of the Board of Management within 28 days after the Secretary receives notice of the dispute under rule 28.1(d) for the Board of Management to determine the dispute.
- (f) At the Meeting of the Board of Management to determine the dispute, all parties to the dispute must be given a full and fair opportunity to state their respective cases orally, in writing or both.
- (g) The Secretary must inform the parties to the dispute of the Board of Management's decision and the reasons for the decision within 7 days after the Meeting of the Board of Management referred to in rule 28.1(e).
- (h) If any party to the dispute is dissatisfied with the decision of the Board of Management they may elect to initiate further dispute resolution procedures as set out in the Rules.

28.2 **Mediation**

- (a) This rule applies:

- (i) where a person is dissatisfied with a decision made by the Board of Management under rule 28.1; or
 - (ii) where a dispute arises between a Member or more than one Member and the Association and any party to the dispute elects not to have the matter determined by the Board of Management.
- (b) Where the dispute relates to a proposal for the suspension or expulsion of a Member this rule does not apply until the procedure under rule 7.3 in respect of the proposed suspension or expulsion has been completed.
- (c) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 28.1(c), or a party to the dispute is dissatisfied with a decision made by the Board of Management under rule 28.1(g) a party to a dispute may:
- (i) Provide written notice to the Secretary of the parties to, and the details of, the dispute;
 - (ii) Agree to, or request the appointment of, a mediator.
- (d) The party, or parties requesting the mediation must pay the costs of the mediation.
- (e) The mediator must be:
- (i) a person chosen by agreement between the parties; or
 - (ii) in the absence of agreement:
 - A. if the dispute is between a Member and another Member – a person appointed by the Board of Management; or
 - B. if the dispute is between a Member or more than one Member and the Association, the Board of Management or a Member of the Board of Management then an independent person who is a mediator appointed to, or employed with, a not for profit organisation.
- (f) A Member can be a mediator, but 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 parties are to exchange written statements of the issues that are in dispute between them and supply copies to the mediator at least 5 days before the mediation session.
- (i) The mediator, in conducting the mediation, must:

- (i) give the parties to the mediation process every opportunity to be heard;
- (ii) allow all parties to consider 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.
- (j) The mediator must not determine the dispute and the mediation must be confidential. Information provided by the parties in the course of the mediation cannot be used in any other legal proceedings that may take place in relation to the dispute.

28.3 Inability to Resolve Disputes

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

29. CANCELLATION AND DISTRIBUTION OF SURPLUS PROPERTY Schedule 1, item 19

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

- B. at the time of the Surplus Property is distributed, has rules that prevent the property being distributed to its members;
- (vi) a trustee for a body corporate referred to in rule 29(c)(v); or
- (vii) a co-operative registered under the *Co-operatives Act 2009* that, at the time of the distribution, is a non-distributing co-operative as defined in that Act.

SCHEDULE 1

Schedule 1 — Matters to be provided for in rules of an incorporated association
[s. 3, 22, 23, 26, 28, 133, 182 and 202]

Division 1 — Matters to be addressed

1. The name of the incorporated association.

2. The objects or purposes of the incorporated association.

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3. The qualifications (if any) for membership of the incorporated association
and provision for when membership commences and when it ceases.

4. The register of members of the incorporated association.

5. The entrance fees, subscriptions and other amounts (if any) to be paid by
members of the incorporated association.

6. The name, constitution, membership and powers of the management
committee or other body having the management of the incorporated
association (in this clause referred to as the committee) and provision for the
following —

(a) the election or appointment of members of the committee;

(b) the terms of office of members of the committee;

(c) the grounds on which, or reasons for which, the office of a member of the
committee shall become vacant;

(d) the filling of casual vacancies occurring on the committee;

(e) the quorum and procedure at meetings of the committee;

(f) the making and keeping of records of the proceedings at meetings of the
committee;

(g) subject to Division 2 clause 1, the circumstances (if any) in which payment
may be made to a member of the committee out of the funds of the
association.

7. The quorum and procedure at general meetings of members of the
incorporated association.

8. The notification of members or classes of members of general meetings of
the incorporated association and their rights to attend and vote at those
meetings.

9. The time within which, and manner in which, notices of general meetings
and notices of motion are to be given, published or circulated.

10. Subject to Division 2 clause 3, the number of members, expressed as a
percentage of membership, who may at any time require that a general
meeting of the incorporated association be convened.

11. The manner in which the funds of the association are to be controlled.

12. Subject to Division 2 clauses 4 and 5, the day in each year on which the
financial year of the incorporated association commences.

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13. The intervals between general meetings of members of the incorporated
association and the manner of calling general meetings.

14. The manner of altering and rescinding the rules and of making additional rules of the incorporated association.
15. Provisions for the custody and use of the common seal of the incorporated association, if it has one.
16. The custody of books and securities of the incorporated association.
17. The inspection by members of the incorporated association of records and documents of the incorporated association.
18. A procedure for dealing with any dispute under or relating to the rules —
 - (a) between members; or
 - (b) between members and the incorporated association.
19. Subject to section 24, the manner in which surplus property of the incorporated association must be distributed or dealt with if the association is wound up or its incorporation is cancelled