



*Portarlington*  
NEIGHBOURHOOD HOUSE

# CONSTITUTION

Draft for member consultation August - September 2022

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.

Adopted by Special Resolution on 12<sup>th</sup> October 2022

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## **PART 1—PRELIMINARY**

### **1 Name of association**

- 1.1 The name of the incorporated association is 'Portarlinton Neighbourhood House Incorporated', often abbreviated as PNH.
- 1.2 The full association name must appear on all business documents.

### **2 Purpose of association**

- 2.1 The purpose of the association is to provide learning, and social and community opportunities.

### **3 Financial year**

- 3.1 The financial year of the association is each period of 12 months ending on 30 June.
- 3.2 The annual subscription applies to a calendar year.

### **4 Definitions in these rules**

- 4.1 In these rules—
  - 4.1.1 absolute majority, of the committee, means a majority of the committee members currently holding office and entitled to vote at the time (as distinct from a majority of committee members present at a committee meeting)
  - 4.1.2 associate member means a member referred to in rules 9 and 14
  - 4.1.3 Chairperson, of a general meeting or committee meeting, means the person chairing the meeting
  - 4.1.4 committee means the committee having management of the business of the association
  - 4.1.5 committee meeting means a meeting of the committee held in accordance with these rules
  - 4.1.6 committee member means a member of the committee elected or appointed under these rules
  - 4.1.7 disciplinary appeal meeting means a meeting of the members of the association convened under these rules
  - 4.1.8 disciplinary meeting means a meeting of the disciplinary subcommittee as per these rules
  - 4.1.9 disciplinary subcommittee means the subcommittee appointed under these rules
  - 4.1.10 financial year means the 12 month period for the reporting of financial statements
  - 4.1.11 full member means an adult member eligible to vote as per rules 8 & 13

- 4.1.12 general meeting means a general meeting of the members of the association and includes an annual general meeting, a special general meeting, and a disciplinary appeal meeting
- 4.1.13 member means a member of the association, either a full member or an associate member
- 4.1.14 member entitled to vote means a member who is entitled to vote at a general meeting
- 4.1.15 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
- 4.1.16 the Act means the associations Incorporation Reform Act 2012 and includes any regulations made under that Act
- 4.1.17 the Registrar means the Registrar of Incorporated Associations

## **PART 2—POWERS OF ASSOCIATION**

### **5 Powers of the association**

- 5.1 Subject to the Act, the association has power to do all things incidental or conducive to achieve its purpose.
- 5.2 Without limiting subrule 5.1, the association may—
  - 5.2.1 acquire, hold and dispose of real or personal property
  - 5.2.2 open and operate accounts with financial institutions
  - 5.2.3 invest its money in any security in which trust monies may lawfully be invested
  - 5.2.4 raise and borrow money on any terms and in any manner as it thinks fit
  - 5.2.5 secure the repayment of money raised or borrowed, or the payment of a debt or liability
  - 5.2.6 appoint agents to transact business on its behalf
  - 5.2.7 enter into any other contract it considers necessary or desirable
  - 5.2.8 The association may only exercise its powers and use its income and assets (including any surplus) for its purpose

### **6 Rules for a not-for-profit organisation**

- 6.1 The association must not distribute any surplus, income or assets directly or indirectly to its members.
- 6.2 Subrule 6.1 does not prevent the association from paying a member—
  - 6.2.1 reimbursement for expenses properly incurred by the member; or
  - 6.2.2 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 (1)

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.

Note (2)

Being a not-for-profit association does not mean that the association cannot make a profit, or hold any profit. It means that the association provides services to the community and do not operate to make a profit for its members, i.e. the profit cannot be distributed to members (like shareholders).

## **PART 3—MEMBERS**

### **7 Minimum number of members and member classifications**

- 7.1 The association must have at least five (5) full members, eligible to vote.
- 7.2 The association will have only two member classifications: full members and associate members.
  - 7.2.1 Associate members may be referred to by category e.g. junior members, employees.

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

- 8.1 Any person, 15 years or over, who supports the purpose, values and strategic direction of the association and agrees to comply with the PNH Code of Conduct, and these rules, is eligible for full membership.
- 8.2 Employees of Portarlington Neighbourhood House are not eligible to become full members.
- 8.3 The committee may reject an application for full membership as per rule 11.2.

### **9 Who is eligible to be an associate member**

- 9.1 Any person under 15 years (junior members) whose parent or guardian is also a full or associate member.
- 9.2 Any person, 15 years or over, who is eligible to be an associate member as determined by the committee, and who supports the purpose, values and strategic direction of the association, and agrees to comply with the PNH Code of Conduct, and these rules.
- 9.3 The committee can determine eligibility for associate members to create new classes.

NOTE: committee can determine eligibility but not change application procedures or rights of associate members. Associate members have same rights as full members, should pay the same fees, but cannot vote, etc. as per rule 14.3. This classification will be typically used for persons who have a potential conflict and should not have voting rights, e.g. juniors, employees. As per the Act and Model Rules 14 (1)(b) other categories (with different rights) must be determined by special resolution of members and the Constitution updated.

- 9.4 Employees of Portarlington Neighbourhood House are eligible to become associate members.
- 9.5 The committee may reject an application for associate membership as per rule 11.2.

### **10 Application for membership**

- 10.1 To apply to become a member of the association, a person must:
  - 10.1.1 be eligible (rule 8 or 9)

10.1.2 submit the prescribed application form to the PNH Office, either in person or online.

10.1.3 pay the annual subscription.

Note

The annual subscription is determined by the association under rule 12.

10.2 Applications for Associate Membership for persons under 15 years of age must be signed by a parent or guardian, and the parent or guardian must also be a full member, or associate member.

## **11 New member start date**

11.1 Membership commences as per the provisions of rules 13 & 14 (rights of members), once the prescribed application form is completed and processed at the PNH Office, and the annual subscription is paid, except for.

11.1.1 voting rights of full members, which are suspended for one (1) month since the date membership was paid and accepted.

11.2 Rejection of membership application

11.2.1 The committee may reject any application within one (1) month of the application being received.

11.2.2 If the committee rejects the application, it must return any money accompanying the application to the applicant.

11.2.3 No reason need be given for the rejection of an application.

## **12 Annual subscription and renewal**

12.1 The committee will determine

12.1.1 the amount of the annual subscription for full members and associate members, for the following calendar year; and

12.1.2 any pro-rata amounts for annual subscriptions for members joining after the start of a calendar year.

12.2 Subscriptions for full members and associate members will be the same

12.2.1 An exception may be applied for junior members (under 15 years).

NOTE: Associate members have right to attend activities and events as per rule 14, and same rights as full members except voting etc.as per rule 14.3.

12.3 Annual subscriptions for the following calendar year can be paid from November, and are due by the 1<sup>st</sup> January of each year

12.3.1 If a member has not paid the annual subscription by the end of April in the calendar year the subscription is due, the member is considered resigned, and the membership ceases as per rule 16.

12.3.2 Members who have not paid any annual subscription due between January and April (in the same year), are not eligible to vote at general meetings (non-financial members).

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

13.1 A full member of the association has the right—

13.1.1 to attend any activity or event of the PNH, including events and activities for contributing to ideas and improvements to the association

13.1.2 to receive regular emails and notices of the association

13.1.3 to receive notice of general meetings and of proposed special resolutions in the manner and time prescribed by these rules; to submit items of business for consideration at a general meeting (other than the AGM, as per rule 31.3); to attend and be heard at general meetings; and to vote at a general meeting; and to have access to the minutes of general meetings and other documents of the association as provided under rule 72 (inspection of relevant records);

13.1.4 to nominate for committee (if 18 years of over); and

13.1.5 inspect any relevant documents as per rule 72.

13.2 A full member is entitled to vote if—

13.2.1 the member has paid the annual subscription as per rule 12.2.2; and

13.2.2 the member's membership rights are not suspended for any reason, such as under a discipline ruling; and

13.2.3 more than one (1) month has passed since he or she became a member of the association as per rule 11.1.1.

### **14 General rights of associate members**

14.1 If under 15 years of age, an associate member of the association has the right—

14.1.1 to attend any activity or event of the PNH including events and activities for contributing to ideas and improvements to the association

14.1.2 to receive regular emails and notices of the association (if under 15 years via a parent or guardian who is a member)

14.1.3 to receive notice of general meetings and of proposed special resolutions in the manner and time prescribed by these rules; and to attend and be heard at general meetings

14.2 If 15 years of age or over, an associate member of the association has the right—

14.2.1 to attend activities and events as per subrule 14.3

14.2.2 to receive regular emails and notices of the association

14.2.3 to receive notice of general meetings and of proposed special resolutions in the manner and time prescribed by these rules; and to attend and be heard at general meetings

14.3 An associate member has no voting rights, cannot be elected to committee, or nominate members to the committee.



## **15 Member rights not transferable**

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

## **16 Ceasing membership**

16.1 The membership of a person ceases on resignation (as per rule 17), expulsion or death.

16.2 If a person ceases to be a member of the association, as soon as practicable, the date the person ceased to be a member must be entered in the register of members.

## **17 Resignation of a member**

17.1 A member is taken to have resigned if the member's annual subscription is not paid by the prescribed date.

17.2 A member who has resigned by not paying the annual subscription, might not be notified that their subscription has ended.

17.3 Reminder notices that subscriptions are overdue do not have to be sent.

17.4 A member may resign by notice in writing given to the association by post, email or in person, or by informing the office in person.

## **18 Register of members**

18.1 The Secretary must keep and maintain a register of full members and associate members that includes—

- The member classification - full member or associate member
- the member's name
- an email address for receiving official notices
- if under 15 years, a link to the associated adult member parent or guardian (emails will be sent to this email address)
- a residential address
- indication of age -
  - if over 18 years of age, indication of age (usually by decade for birth year)
  - if under 18 years of age, year of birth
- the date of becoming a member
- an emergency contact
- any other information determined by the committee
- for each former member, the date of ceasing to be a member

### **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.

## **PART 4—DISCIPLINARY PROCEDURE**

### **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—

- 19.1 has failed to comply with these rules, PNH Values or Code of Conduct; or
- 19.2 refuses to support the purpose of the association; or
- 19.3 has engaged in conduct prejudicial to the association.

### **20 Disciplinary subcommittee**

- 20.1 If the committee is satisfied that there are sufficient grounds for taking disciplinary action against a member, the committee must appoint a disciplinary subcommittee to hear the matter and determine what action, if any, to take against the member.
- 20.2 The members of the disciplinary subcommittee—
  - 20.2.1 may be committee members, members of the association or anyone else; but
  - 20.2.2 must not be biased against, or in favour of, the member concerned.

### **21 Notice to member re disciplinary action**

- 21.1 Before disciplinary action is taken against a member, the Secretary must give written notice to the member—
  - 21.1.1 stating that the association proposes to take disciplinary action against the member; and
  - 21.1.2 stating the grounds for the proposed disciplinary action; and
  - 21.1.3 specifying the date, place and time of the meeting at which the disciplinary subcommittee intends to consider the disciplinary action (the *disciplinary meeting*); and
  - 21.1.4 advising the member that he or she may do one or both of the following—
    - (i) attend the disciplinary meeting and address the disciplinary subcommittee at that meeting;
    - (ii) give a written statement to the disciplinary subcommittee at any time before the disciplinary meeting; and
  - 21.1.5 setting out the member's appeal rights under rule 23.
- 21.2 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 disciplinary subcommittee**

- 22.1 At the disciplinary meeting, the disciplinary subcommittee must—
  - 22.1.1 give the member an opportunity to be heard; and

- 22.1.2 consider any written statement submitted by the member.
- 22.2 After complying with subrule 22.1, the disciplinary subcommittee may—
  - 22.2.1 take no further action against the member; or
  - 22.2.2 reprimand the member; or
  - 22.2.3 suspend the membership rights of the member for a specified period; or
  - 22.2.4 expel the member from the association.
- 22.3 The disciplinary subcommittee may not fine the member.
- 22.4 The suspension of membership rights or the expulsion of a member by the disciplinary subcommittee under this rule takes effect immediately after the vote is passed.

## **23 Appeal rights**

- 23.1 A person whose membership rights have been suspended or who has been expelled from the association under the discipline subcommittee may give notice to the effect that he or she wishes to appeal against the suspension or expulsion.
- 23.2 The notice must be in writing and given—
  - 23.2.1 to the disciplinary subcommittee immediately after the vote to suspend or expel the person is taken; or
  - 23.2.2 to the Secretary not later than 48 hours after the vote.
- 23.3 If a person has given notice under subrule 23.2, a disciplinary appeal meeting must be convened by the committee as soon as practicable, but in any event not later than 21 days, after the notice is received.
- 23.4 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—
  - 23.4.1 specify the date, time and place of the meeting; and
  - 23.4.2 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**

- 24.1 At a disciplinary appeal meeting—
  - 24.1.1 no business other than the question of the appeal may be conducted; and
  - 24.1.2 the committee must state the grounds for suspending or expelling the member and the reasons for taking that action; and
  - 24.1.3 the person whose membership has been suspended or who has been expelled must be given an opportunity to be heard.

- 24.2 After complying with subrule 24.1, 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.
- 24.3 A member may not vote by proxy at the meeting.
- 24.4 The decision is upheld if not less than three-quarters (75%) of the members voting at the meeting vote in favour of the decision.

## **PART 5—GRIEVANCE PROCEDURE**

### **25 Application**

- 25.1 The grievance procedure set out in this Division applies to disputes under these rules between—
- 25.1.1 a member and another member
  - 25.1.2 a member and the committee
  - 25.1.3 a member and the association
- 25.2 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 First step is self-resolution**

- 26.1 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 Second step is resolutions via mediation**

- 27.1 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—
- 27.1.1 notify the committee of the dispute; and
  - 27.1.2 agree to or request the appointment of a mediator; and
  - 27.1.3 attempt in good faith to settle the dispute by mediation.
- 27.2 The mediator must be—
- 27.2.1 a person chosen by agreement between the parties; or
  - 27.2.2 in the absence of agreement—
    - (i) if the dispute is between a member and another member—a person appointed by the committee; or
    - (ii) if the dispute is between a member and the committee or the association—a person appointed or employed by the Dispute Settlement Centre of Victoria.
- 27.3 A mediator appointed by the committee may be a member or former member of the association but in any case, must not be a person who—

- 27.3.1 has a personal interest in the dispute; or
- 27.3.2 is biased in favour of or against any party.
- 27.4 The mediator to the dispute, in conducting the mediation, must—
  - 27.4.1 give each party every opportunity to be heard; and
  - 27.4.2 allow due consideration by all parties of any written statement submitted by any party; and
  - 27.4.3 ensure that natural justice is afforded to the parties throughout the mediation process.
- 27.5 The mediator should determine the dispute, and give a written consideration to each party and the committee.
  - 27.5.1 The mediator's determination is standing.
  - 27.5.2 The mediator may determine the matter be resolved under the Disciplinary Procedures, rules 19-24.
- 27.6 Once the grievance procedure is completed, and any subsequent (if necessary) discipline procedure is completed, any decisions can only be overturned by resolving the dispute in accordance with law.

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

### **28 Annual general meetings**

- 28.1 The committee must convene an annual general meeting of the association to be held within five (5) months after the end of each financial year.
- 28.2 The committee may determine the date, time and place of the annual general meeting.
- 28.3 The ordinary business of the annual general meeting is as follows—
  - 28.3.1 to confirm the minutes of the previous annual general meeting and of any special general meeting held since then;
  - 28.3.2 to receive and consider—
    - (i) the annual report of the committee on the performance and 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 committee in accordance with Part 7 of the Act;
  - 28.3.3 to select the elected members of the committee.
- 28.4 The annual general meeting may also conduct any other business of which notice has been given in accordance rule 71 re notices of meetings.
- 28.5 No other business will be conducted at the Annual General Meeting

## **29 Special general meetings**

- 29.1 Any general meeting of the association, other than an annual general meeting or a disciplinary appeal meeting, is a special general meeting.
- 29.2 The committee may convene a special general meeting whenever it thinks fit.
- 29.3 No business other than that set out in the notice under rule 31 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 31 and the majority of members at the meeting agree.

## **30 Special general meeting held at request of members**

- 30.1 The committee must convene a special general meeting if a request to do so is made in accordance with subrule 30.2 by at least 5% of the total number of members, eligible to vote.
- 30.2 A request for a special general meeting must—
  - 30.2.1 be in writing; and
  - 30.2.2 state the business to be considered at the meeting and any resolutions to be proposed; and
  - 30.2.3 include the names and signatures of the members requesting the meeting; and
  - 30.2.4 be given to the Secretary.
- 30.3 If the committee 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.
- 30.4 A special general meeting convened by members under subrule 30.2—
  - 30.4.1 must be held within three (3) months after the date on which the original request was made; and
  - 30.4.2 may only consider the business stated in that request.
- 30.5 The association must reimburse all reasonable expenses incurred by the members convening a special general meeting under subrule 30.2.

## **31 Notice of general meetings**

- 31.1 The Secretary (or, in the case of a special general meeting convened under rule 30, the members convening the meeting) must give to each member of the association—
  - 31.1.1 at least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting; or
  - 31.1.2 at least 14 days' notice of a general meeting in any other case.
- 31.2 The notice for general meetings must—
  - 31.2.1 specify the date, time and place of the meeting; and

31.2.2 indicate the general nature of each item of business to be considered at the meeting; and

31.2.3 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

31.2.4 comply with rule 32 (re proxy voting).

31.3 No business other than that set out in the notice under rules 29 and 30 may be conducted at the meeting.

31.4 This rule 31 re notices does not apply to a disciplinary appeal meeting (under rules for notice of a disciplinary appeal meeting).

## **32 Proxies at general meetings**

32.1 A member eligible to vote 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.

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

32.3 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.

32.4 If the committee 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.

32.5 Notice of a general meeting given to a member under rule 31 must—

32.5.1 state that the member may appoint another member as a proxy for the meeting; and

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

32.6 A form appointing a proxy must be given to the Chairperson of the meeting before the commencement of the meeting.

32.7 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.

## **33 Use of technology at general meetings**

33.1 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.

33.2 For the purposes of this Part, a member participating in a general meeting as permitted under subrule 34.1 is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

- 33.3 If a member cannot attend a meeting in person, the member cannot insist that PNH provide a technology service for their convenience if it is not easily available or practical.

## **34 Quorum at general meetings**

- 34.1 No business may be conducted at a general meeting unless a quorum of members is present.
- 34.2 The quorum for a general meeting is the presence (physically, by proxy or as allowed under rule 33) of 20 members entitled to vote, although culturally the aim is to have many members present at any general meeting.
- 34.3 If a quorum is not present within 30 minutes after the notified commencement time of a general meeting—
- 34.3.1 in the case of a meeting convened by, or at the request of, members under rule 30—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 30.
- 34.3.2 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.
- 34.4 If a quorum is not present within 30 minutes after the time to which a general meeting has been adjourned under subrule 31 (re notice of meeting), the members present at the (adjourned) meeting (if not fewer than three) may proceed with the business of the meeting as if a quorum were present.

## **35 Adjournment of general meeting**

- 35.1 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.
- 35.2 Without limiting subrule 35.1, a meeting may be adjourned—
- 35.2.1 if there is insufficient time to deal with the business at hand; or
- 35.2.2 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 committee at an annual general meeting.
- 35.3 No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- 35.4 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 31.



## **36 Voting at general meeting**

- 36.1 Only members eligible to vote as per rules 13 and 14 can vote at general meetings, i.e.
- 36.1.1 the member is a full member (not an associate member);
  - 36.1.2 the member has paid the annual subscription as per rule 12.2;
  - 36.1.3 the member's membership rights are not suspended for any reason, such as under a discipline ruling; and
  - 36.1.4 more than one (1) month has passed since he or she became a member of the association as per rule 11.1.1.
- 36.2 On any question arising at a general meeting—
- 36.2.1 subject to subrule 36.4, each full member who is entitled to vote has one vote; and
  - 36.2.2 members may vote personally or by proxy; and
  - 36.2.3 except in the case of a special resolution, the question must be decided on a majority of votes.
- 36.3 If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- 36.4 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.
- 36.5 This rule does not apply to a vote at a disciplinary appeal meeting conducted under rule 24.

## **37 Special resolutions**

- 37.1 A special resolution is passed if not less than three-quarters (75%) of the members voting at a general meeting (whether in person or by proxy) vote in favour of the resolution.

Note

A special resolution requires 21 days notices and is required—

- to remove a committee member from office;
- to alter these rules, including changing the name or any of the purposes of the association;
- to wind up the association, and to determine the body for donating surplus fund.

## **38 Determining whether resolution carried**

- 38.1 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—
- 38.1.1 carried; or
  - 38.1.2 carried unanimously; or
  - 38.1.3 carried by a particular majority; or
  - 38.1.4 lost—
- and an entry to that effect in the minutes of the meeting is conclusive proof of that fact.
- 38.2 If a poll (where votes are cast in writing) is demanded by three (3) or more members on any question—

- 38.2.1 the poll must be taken at the meeting in the manner determined by the Chairperson of the meeting; and
- 38.2.2 the Chairperson must declare the result of the resolution on the basis of the poll.
- 38.3 A poll demanded on the election of the Chairperson or on a question of an adjournment must be taken immediately.
- 38.4 A poll demanded on any other question must be taken before the close of the meeting at a time determined by the Chairperson.

### **39 Minutes of general meeting**

- 39.1 The committee must ensure that minutes are taken and kept of each general meeting.
- 39.2 The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- 39.3 In addition, the minutes of each annual general meeting must include—
  - 39.3.1 the names of the members attending the meeting; and
  - 39.3.2 proxy forms given to the Chairperson of the meeting under rule 32; and
  - 39.3.3 the annual performance report; and
  - 39.3.4 the financial statements submitted to the members in accordance with rule 28; and
  - 39.3.5 the certificate signed by two committee members, certifying that the financial statements give a true and fair view of the financial position and performance of the association; and
  - 39.3.6 any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.

## **PART 7—COMMITTEE of MANAGEMENT (CoM)**

### **40 Role and powers of committee**

- 40.1 The business of the association must be managed by or under the direction of a committee.
- 40.2 The committee 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.
- 40.3 The committee may—
  - 40.3.1 appoint and remove staff;
  - 40.3.2 establish subcommittees consisting of members with terms of reference it considers appropriate.

## **41 Delegation of powers and function**

- 41.1 The committee may delegate to a member of the committee, a subcommittee or staff, any of its powers and functions other than—
  - 41.1.1 this power of delegation; or
  - 41.1.2 a duty imposed on the committee by the Act or any other law.
- 41.2 The delegation must be in writing and may be subject to the conditions and limitations the committee considers appropriate.
- 41.3 The committee may, in writing, revoke a delegation wholly or in part.

## **42 Composition of committee**

- 42.1 The committee will consist of:
  - 42.1.1 four executive roles (President; Vice President; Treasurer and Secretary) and
  - 42.1.2 a number of general committee member roles, the number determined by the committee, and with portfolio duties (if any) also determined by the committee.
  - 42.1.3 The total number of (elected and appointed) committee members will not be less than 5 or more than 10.
- 42.2 A committee member may hold more than one role.
- 42.3 The committee consists of the following elected roles -
  - 42.3.1 three executive roles: President; Vice President; and Secretary; and
  - 42.3.2 a number of general committee member roles to complete the determined number of elected committee members
- 42.4 The committee consists of the following roles appointed by committee because of skills required for these roles —
  - 42.4.1 one executive role: Treasurer, and
  - 42.4.2 a general committee member: Assistant Treasurer to comply with Rule 48.3

Note: refer to rule 51 for election of committee members, and rule 54 for appointed committee members

## **43 General duties of the committee**

- 43.1 As soon as practicable after being elected or appointed to the committee, each committee member must become familiar with these rules and the Act.
- 43.2 The committee is collectively responsible for ensuring that the association complies with the Act and that individual members of the committee comply with these rules.
- 43.3 Committee members must exercise their powers and discharge their duties with reasonable care and diligence.
- 43.4 Committee members must exercise their powers and discharge their duties—

43.4.1 in good faith in the best interests of the association; and

43.4.2 for a proper purpose.

43.5 Committee members and former committee members must not make improper use of—

43.5.1 their position; or

43.5.2 information acquired by virtue of holding their position—so as to gain an advantage for themselves or any other person or to cause detriment to the association.

Note

See also Division 3 of Part 6 of the Act which sets out the general duties of the office holders of an incorporated association.

43.6 In addition to any duties imposed by these rules, a committee member must perform any other duties imposed from time to time by resolution at a general meeting.

## **44 Role of President**

44.1 Subject to rule 45, the President is the Chairperson for any general meetings and for any committee meetings.

44.2 The President may have other responsibilities as per the position description and delegated authority, as determined by the committee.

## **45 Role of Vice-President**

45.1 In the absence of the President, the Vice-President will -

45.1.1 act as Chairperson for any general meetings and for any committee meetings, and

45.1.2 assume the delegated authority of the President.

45.2 If the President and the Vice-President are both absent, or are unable to preside at a meeting, the Chairperson of the meeting must be—

45.2.1 in the case of a general meeting—a member elected by the other members present; or

45.2.2 in the case of a committee meeting—a committee member elected by the other committee members present.

45.3 The Vice-President may have other responsibilities as per the position description and delegated authority, as determined by the committee.

## **46 Role of Secretary**

46.1 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.

46.2 The Secretary must—

46.2.1 ensure the integrity of the register of members in accordance with rule 18 (register of members); and

- 46.2.2 ensure the integrity of record keeping procedures for all relevant documents of the association except for the financial records
  - 46.2.3 manage any requests for inspection of the records by members as per rule 71, (Inspection of relevant documents by members); and
  - 46.2.4 perform any other duty or function imposed on the Secretary by these rules.
- 46.3 The Secretary must give to the Registrar notice of his or her appointment within 14 days after the appointment.
- 46.4 The Secretary may have other responsibilities as per the position description and delegated authority, as determined by the committee.

## **47 Role of Treasurer**

- 47.1 The Treasurer must ensure compliance to all rules under Section 8 —Financial Matters, for management of funds, financial records, and preparation of financial statements, including
- 47.1.1 ensuring the integrity of all procedures for all monies paid to or received by the association and the issue of receipts for those monies in the name of the association.
- 47.2 The Treasurer must prepare an annual budget for presentation to the committee, and provide monthly financial reports to committee for the purpose of monitoring finances.
- 47.3 The Treasurer must ensure that at least one other committee member (usually the Assistant Treasurer) has access to the accounts and financial records of the association.
- 47.4 The Treasurer may have other responsibilities as per the position description and delegated authority, as determined by the committee.

## **48 Role of Assistant Treasurer**

- 48.1 The Assistant Treasurer must provide back-up to the Treasurer at all times, particularly in the absence of the Treasurer.
- 48.2 The Assistant Treasurer (along with the Treasurer) must ensure compliance to all rules under Section 8 —Financial Matters, for management of funds, financial records, and preparation of financial statements, including
- 48.2.1 ensuring the integrity of all procedures for all monies paid to or received by the association and the issue of receipts for those monies in the name of the association.
- 48.3 The Assistant Treasurer may have other responsibilities as per the position description and delegated authority, as determined by the committee.

## **49 Who is eligible to be a committee member**

- 49.1 A full member, 18 years of age or over, is eligible to be elected or appointed as a committee member, providing-
- 49.1.1 the full member is entitled (financial) to vote at a general meeting as per rules 13 and 36; and

- 49.1.2 the member has not previously been removed from the committee by special resolution; and
- 49.1.3 the member is not ineligible due to the requirements of the section 78 of the Act as in rule 55.3.6
- 49.1.4 the member agrees to uphold the responsibilities of the position as per these rules and the position description; and
- 49.1.5 the member is elected or appointed under these rules.

## **50 Date all elected committee positions must be declared vacant**

- 50.1 The Chairperson of the Annual General Meeting must declare all elected committee positions on the committee vacant, and the Returning Officer must hold elections for those positions in accordance with rules 49 to 53.

## **51 Nominations for an elected committee position**

- 51.1 Prior to the Annual General Meeting, the committee must—
  - 51.1.1 call for nominations for the elected executive and general committee member positions;
  - 51.1.2 provide members with at least a summary of the available roles; and
  - 51.1.3 notify members of the nomination process, including nomination closing date, and the name of the Returning Officer receiving the nominations.
- 51.2 The Returning Officer is appointed by the committee.
- 51.3 An eligible member of the association may—
  - 51.3.1 nominate himself or herself; or
  - 51.3.2 with the member's consent, be nominated by another member.
- 51.4 All nominations must be seconded by a full member of association, eligible to vote.
- 51.5 Nominations may be submitted by one eligible member for multiple committee positions.
- 51.6 If a committee position receives no nominations in the nomination procedure prior to the meeting, then nominations can be called from the floor of the meeting where the election is to be held.

## **52 Process for election of elected committee members**

- 52.1 At the annual general meeting, separate elections must be held for each of the following positions, and in the following order—
  - 52.1.1 President
  - 52.1.2 Vice-President
  - 52.1.3 Secretary
  - 52.1.4 Elected General Committee Members (in any order as determined by the committee, or as a single election)

- 52.2 If only one member is nominated for the executive roles under the election, the Returning Officer must declare the member elected to that position.
- 52.3 If the number of members nominated for the general committee members is less than or equal to the number to be elected, the Returning Officer of the meeting must declare each of those members to be elected to the position.
- 52.4 The committee may continue to act despite any vacancy in its membership.
- 52.4.1 If less than five committee members are elected or appointed, and no other nominations are received, then the committee members must fill the casual vacancies as soon as possible, as per rule 57, until at least five committee members are appointed or elected.
- 52.5 On his or her election, the new President may take over as Chairperson of the meeting.

### **53 Ballot process for election of committee**

- 53.1 If more than one member is nominated for any executive role, or more general committee members are nominated for the available positions, a ballot must be held in accordance with rule 53.
- 53.2 Before the ballot is taken, each candidate may make a short speech in support of his or her election.
- 53.3 The election must be by secret ballot.
- 53.4 The Returning Officer must give a blank piece of paper or voting slip to—
- (i) each member present in person; and
  - (ii) each proxy appointed by a member.
- Example
- If a member has been appointed the proxy of five other members, the member must be given six ballot papers—one for the member and one each for the other members.
- 53.5 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.
- 53.6 If the ballot is for more than one position, e.g. for the general members of committee—
- 53.6.1 the voter must write on the ballot paper the name of each candidate for whom they wish to vote;
  - 53.6.2 the voter must not write the names of more candidates than the number to be elected.
- 53.7 Ballot papers that do not comply with subrule 53.6 are not to be counted.
- 53.8 Each ballot paper on which the name of a candidate has been written counts as one vote for that candidate.

- 53.9 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.
- 53.10 If the Returning Officer is unable to declare the result of an election under subrule 53.9 because 2 or more candidates received the same number of votes, the Returning Officer must—
- 53.10.1 conduct a further election for the position in accordance with subrules 53.1 to 53.9 to decide which of those candidates is to be elected; or
- 53.10.2 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.

## **54 Process for appointed committee members**

- 54.1 The appointment of Treasurer and Assistant Treasurer will be decided by committee and the appointment will be for a determined time, no more than two years, and can be extended.
- 54.2 Appointments to fill a vacant elected position are current until the next AGM.

## **55 Ceasing to be a committee member**

- 55.1 All elected committee positions are declared vacant at the next annual general meeting.
- 55.1.1 A committee member, if eligible, may be re-elected.
- 55.2 Positions for the appointed Treasurer and Assistant Treasurer are declared vacant at the end of the respective contracts.
- 55.3 A person ceases to be a committee member if he or she—
- 55.3.1 resigns from the committee by written notice addressed to the committee; or
- 55.3.2 ceases to be a member of the association for any reason including death; or
- 55.3.3 ceases to reside in Australia; or
- 55.3.4 is removed as per rule 56; or
- 55.3.5 fails to attend 3 consecutive committee meetings (other than special or urgent committee meetings) without leave of absence under rule 65; or
- 55.3.6 ceases to be eligible as a committee member by operation of section 78 of the Act, e.g.

becomes insolvent under administration; or becomes a represented person within the meaning of the **Guardianship and Administration Act 2019**; or is disqualified from managing corporations under Part 2D.6 of the Corporations Act; or is disqualified from managing Aboriginal and Torres Strait Islander corporations under Part 6-5 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 of the Commonwealth; or is disqualified from managing co-operatives under Division 2 of Part 3.1 of the Co-operatives National Law (Victoria)



## **56 Removal of a committee member by general meeting**

- 56.1 A general meeting of the association may by special resolution remove a committee member from office
  - 56.1.1 at the general meeting to remove a committee member, the member who is subject to the proposed special resolution may make representations to the members of the association in writing to the President or Secretary. The President or Secretary may give a copy of the representation to each member of the association, those present at the meeting, or read the representation at the meeting.
- 56.2 The general meeting held to remove a committee member, may elect an eligible member of the association to fill the vacant position in accordance, using the committee election rules.

## **57 Casual vacancies on committee**

- 57.1 A casual vacancy on committee is a position that-
  - 57.1.1 has become vacant since the last annual general meeting; or
  - 57.1.2 was not filled by election at the last annual general meeting; or
- 57.2 The committee may appoint an eligible member of the association to fill a casual vacancy.
- 57.3 If the position of President, Vice President or Secretary becomes vacant, the committee can fill that vacancy from within, and then fill any remaining casual vacancies.
- 57.4 If the position of Secretary becomes vacant, the committee must appoint a member to the position within 14 days after the vacancy arises.
- 57.5 The members via a special general meeting can elect a committee member as per rule 56.
- 57.6 As per rule 52.4, the committee may continue to act despite any vacancy in its membership, but should avoid being less than five committee members.
  - 57.6.1 If less than five (5) committee members are appointed or elected, then the committee members must fill the casual vacancies as soon as possible, as per rule 54, until at least five (5) committee members are appointed or elected.

## **58 Meetings of committee**

- 58.1 The committee must meet at least four (4) times in each year at the dates, times and places determined by the committee.
- 58.2 The date, time and place of the first committee meeting must be determined by the members of the committee as soon as practicable after the annual general meeting of the association at which the members of the committee were elected.
- 58.3 The committee may decide a timetable for regular general meetings of the committee.
- 58.4 Special committee meetings may be convened by the President or by any four (4) members of the committee.

- 58.5 A committee member who is not physically present at a committee meeting may participate in the meeting by the use of technology that allows that committee member, and the committee members present at the meeting, to clearly and simultaneously communicate with each other.
- 58.6 For the purposes of this Part, a committee member participating in a committee meeting as permitted under subrule (58.5) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

## **59 Notice of committee meetings**

- 59.1 Notice of each regular committee meeting must be given to each committee member no later than seven (7) days before the date of the meeting.
- 59.2 The notice must state the date, time and place of the meeting, and the business of the meeting.
- 59.3 If a special committee meeting is convened, the notice must include the general nature of the business to be conducted.
- 59.4 The only business that may be conducted at the meeting is the business for which the meeting is convened.

## **60 Urgent meetings committee meetings**

- 60.1 In cases of urgency, a meeting can be held without notice being given in accordance with rule 59 provided that as much notice as practicable is given to each committee member by the quickest means practicable.
- 60.2 Urgent resolutions can also be made by email.
- 60.3 Any resolution made as urgent by meeting or by email must be passed by an absolute majority of the committee.
- 60.4 The only business that may be conducted at an urgent meeting is the business for which the meeting is convened.

## **61 Quorum for committee meetings**

- 61.1 No business may be conducted at a committee meeting unless a quorum is present.
- 61.2 The quorum for a committee meeting is the presence (in person or as allowed under rule 58.5) of a majority of the committee members holding office.
- 61.3 If a quorum is not present within 30 minutes after the notified commencement time of a committee meeting—
- 61.3.1 in the case of a special meeting—the meeting lapses;
- 61.3.2 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 59**.

## **62 Voting at committee meetings**

- 62.1 On any question arising at a committee meeting, each committee member present at the meeting has one vote.
- 62.2 A motion is carried if a majority of committee members present at the meeting vote in favour of the motion.
- 62.3 Subrule 62.2 does not apply to any motion or question which is required by these rules to be passed by an absolute majority of the committee.
- 62.4 If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- 62.5 Voting by proxy is not permitted.

## **63 Conflict of interest**

- 63.1 When the conflict of interest is because a committee member has a material personal interest in a matter being considered at a committee meeting, the member must—
  - 63.1.1 disclose the nature and extent of that interest to the committee; and
  - 63.1.2 not be present while the matter is being considered at the meeting; and
  - 63.1.3 not vote on the matter.
- 63.2 Rule 63.1 does not apply to a material personal interest—
  - 63.2.1 that exists only because the member belongs to a class of persons for whose benefit the association is established; or
  - 63.2.2 that the member has in common with all, or a substantial proportion of, the members of the association.
- 63.3 When the conflict of interest is because a committee member has interests, other than a material personal interest, which may improperly influence the performance of their duties and responsibilities, the member must—
  - 63.3.1 disclose the nature and extent of that interest to the committee; and
  - 63.3.2 the committee shall decide how to manage that conflict of interest, i.e. the committee shall decide regarding level of participation in discussion and voting.

### **Note**

Under section 81(3) of the Act, if there are insufficient committee 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.

## **64 Minutes of committee meetings**

- 64.1 The committee must ensure that minutes are taken and kept of each committee meeting.
- 64.2 The minutes must record the following—
  - 64.2.1 the names of the members in attendance at the meeting
  - 64.2.2 the business considered at the meeting (topics as listed in the agenda)

64.2.3 any resolution on which a vote is taken and the result of the vote

64.2.4 any actions delegated to committee members

64.2.5 any conflict of interest disclosed under rule 63.

64.3 The Minutes should also contain the results of any urgent meetings between regular meetings, particularly any resolutions made by email.

## **65 Leave of absence from committee**

65.1 The committee may grant a committee member leave of absence from committee meetings.

65.2 The committee must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the committee member to seek the leave in advance.

## **PART 8—FINANCIAL MATTERS**

### **66 Source of funds**

66.1 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 committee.

### **67 Management of funds**

67.1 The association must hold 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.

67.2 Subject to any restrictions imposed by a general meeting of the association, the committee may approve expenditure on behalf of the association.

67.3 The committee may delegate in writing the authority for the Treasurer or other officials to expend funds on behalf of the association (including by electronic funds transfer) up to a specified limit without requiring approval from the committee for each item on which the funds are expended.

67.4 All electronic transfers, cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed or authorised by two committee members.

67.5 All funds of the association must be deposited into the financial account of the association no later than five (5) working days after receipt.

67.6 All payments authorised by the committee or by a general meeting of the association must be made from the association's funds.

67.7 All invoices for expenditure must be paid within the terms of the invoice or within two (2) weeks of receipt of the invoice, unless the invoice or payment is being investigated.

- 67.8 Under written delegated authority of the committee, the Treasurer, or another official, 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.

## **68 Financial records**

- 68.1 The association must keep financial records that—
- 68.1.1 correctly record and explain its transactions, financial position and performance; and
  - 68.1.2 enable financial statements to be prepared as required by the committee and by the Act.
- 68.2 The association must retain the financial records for seven years after the transactions covered by the records are completed.
- 68.3 The Treasurer must keep in his or her custody, or under his or her control—
- 68.3.1 the financial records for the current financial year; and
  - 68.3.2 any other financial records as authorised by the committee.

## **69 Financial statements**

- 69.1 For each financial year, the committee must ensure that the requirements under the Act relating to the financial statements of the association are met.
- 69.2 Without limiting subrule (69.1), those requirements include—
- 69.2.1 the preparation of the annual financial statements;
  - 69.2.2 if required, the review or auditing of the financial statements;
  - 69.2.3 the certification of the annual financial statements by the committee;
  - 69.2.4 the submission of the financial statements to the annual general meeting of the association;
  - 69.2.5 the lodgement with the Registrar of the financial statements and accompanying reports, certificates, statements and fee.

## **PART 9—GENERAL MATTERS**

### **70 Registered address**

- 70.1 The registered address of the association is—
- 87 Newcombe St PORTARLINGTON Vic 3223

### **71 Notice requirements - notice to members**

- 71.1 The preferred method for any notice required to be given to a member or a committee member under these rules will be given by the email address in the register of members.
- 71.2 Any notice required to be given to a member or a committee member under these rules may be given—

71.2.1 by handing the notice to the member personally; or

71.2.2 by sending it by post to the member at the address recorded for the member on the register of members; or

71.2.3 by email transmission.

71.3 Any notice required to be given to the association or the committee may be given—

71.3.1 by handing the notice to a member of the committee; or

71.3.2 by sending the notice by post to the registered address; or

71.3.3 by leaving the notice at the registered address (leaving at the office); or

71.3.4 by email to the email address of the association or the Secretary.

## **72 Inspection of relevant records by members**

72.1 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—

72.1.1 its membership records;

72.1.2 its financial statements;

72.1.3 its financial records;

72.1.4 records of meetings;

72.1.5 policy documents;

72.1.6 records and documents relating to transactions, dealings, business or property of the association.

72.2 A member may not inspect the register of members or membership records, committee meeting Minutes, financial records, or documents related to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the association.

72.3 A copy of these rules, the values, and the Code of Conduct Policy will be available on the Website.

72.4 Full financial members may request to inspect minutes of general meetings, policy documents, and annual financial statements.

## **73 Winding up and cancellation**

73.1 The association may be wound up voluntarily by special resolution.

73.2 In the event of the winding up or the cancellation of the incorporation of the association, the surplus assets of the association must not be distributed to any members or former members of the association.

73.3 Subject to the Act and any court order made under section 133 of the Act, the surplus assets must be given to a body that has similar purposes to the association and which is not carried on for the profit or gain of its individual members.

73.4 The body to which the surplus assets are to be given must be decided by special resolution and meet any current agreement e.g. with a peak body or funding agreement.

## **74 Alteration of rules**

74.1 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.