

Cancer Council of Western Australia (Inc)

**Constitution and Rules  
for Cancer Council Western Australia**

(Revised 24 October 2018)

Cancer Council Western Australia

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# Constitution and Rules

## 1. Name of Council

The name of the Council is Cancer Council of Western Australia (Inc).

## 2. Definitions

In these Rules, unless the contrary intention appears:

**ACNC Act** means the *Australian Charities and Not-for profits Commission Act 2012 (Cth)*;

**Act** means the *Associations Incorporation Act 2015 (WA)*;

**Annual General Meeting** is the meeting convened under Rule 9.1(a);

**Annual Subscription** means the annual fee payable by Members determined in accordance with Rule 6;

**Board** means the board of management of the Council referred to in Rule 13;

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

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Western Australia;

**Cancer Control** refers to coordinated measures that focus on research, prevention, detection, treatment, services and support that aims to reduce the incidence, mortality and impact of cancer on the population.

**Chief Executive Officer** means the chief executive officer of the Council referred to in Rule 18;

**Committee** has the meaning given to it in Rule 17.1;

**Council** means the Cancer Council of Western Australia (Inc);

**Commissioner** means the Commissioner for Consumer Protection exercising powers under the Act;

**Convene** means to call together for a formal meeting;

**Department** means the government department with responsibility for administering the *Associations Incorporation Act 2015*;

**Financial Year** means each period commencing 1 July and ending on 30 June in the following year;

**General Meeting** means a meeting to which all Members are invited;

**Honorary Member** has the meaning set out in Rule 5.2;

**Life Member** has the meaning set out in Rule 5.3;

**Member** means an Ordinary Member, an Honorary Member or a Life Member;

**Membership Application** has the meaning set out in Rule 5.1(b);

**Ordinary Member** means a Member appointed under Rule 5.1;

**Ordinary Resolution** means a resolution other than a Special Resolution;

**Poll** means voting conducted in written form (as opposed to a show of hands);

**President** means:

- (a) in relation to the proceedings at a Board Meeting or General Meeting, the person presiding at the Board Meeting or General Meeting in accordance with Rules 12.2 or 14.4 as applicable; or
- (b) otherwise than in relation to the proceedings referred to in paragraph (a), the person referred to in Rules 13.3, 13.4, 14.1, 14.2, 14.3 and 19(e) or, if that person is unable to perform his or her functions, the Vice President;

**Register of Members** means the register of all Members;

**Registered Office** means the registered office of the Council;

**Rules** means rules contained in this the rules of the Council as amended from time to time in accordance with Rule 21;

**Special General Meeting** means a General Meeting other than the Annual General Meeting; and

**Special Resolution** has the meaning given by section 51 of the Act, being a resolution passed by a majority of not less than three-fourths of the Members of the Council present, in person or by proxy at a General Meeting of the Council at which there is a quorum and who are entitled under the Rules of the Council and the Act to vote.

### 3. Objects of Council

- (a) The objects of the Council are to reduce the incidence and impact of all types of cancer within the community of Western Australia by:
  - (i) promoting research and education into the cause, diagnosis, detection and treatment thereof;
  - (ii) providing information, support and assistance to cancer patients and their families;
  - (iii) providing advocacy for persons affected by cancer, the treatment of and prevention of cancer and
  - (iv) other Cancer Control activities.
- (b) The property and income of the Council shall be applied solely towards the promotion of the objects or purposes of the Council and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to Members, except in good faith in the promotion of those objects or purposes.

## 4. Powers of Council

The powers conferred on the Council are the same as those conferred by section 14 of the Act, so that subject to the Act and any additions, exclusions or modifications set out in these Rules, the Council may do all things necessary or convenient for carrying out its objects and purposes, and in particular, may:

- (a) acquire, hold, deal with, and dispose of any real or personal property;
- (b) open and operate bank accounts;
- (c) invest its money:
  - (i) in any security in which trust monies may lawfully be invested; or
  - (ii) in any other manner authorised by these Rules;
- (d) borrow money upon such terms and conditions as the Council thinks fit;
- (e) give such security for the discharge of liabilities incurred by the Council as the Council thinks fit;
- (f) appoint agents to transact any business of the Council on its behalf;
- (g) enter into any other contract it considers necessary or desirable; and
- (h) act as trustee and accept and hold real and personal property upon trust, but does not have power to do any act or thing as a trustee that, if done otherwise than as a trustee, would contravene the Act or these Rules.

## 5. Membership

### 5.1 Ordinary Members

- (a) A person who is:
  - (i) nominated by an existing Member; and
  - (ii) approved for Ordinary Membership by the Board as provided in these Rules, is eligible to become an Ordinary Member.
- (b) An application for Ordinary Membership (**Membership Application**) must be:
  - (i) in the form approved by the Board;
  - (ii) signed by the:
    - (A) applicant; and
    - (B) existing Member who has nominated the applicant; and
  - (iii) lodged with the Chief Executive Officer who shall refer the nomination to the Board for its consideration.

- (c) The Board must consider any Membership Application at the next Board Meeting and must advise the Chief Executive Officer as soon as practicable after that Board Meeting whether the Membership Application has been approved or rejected.
- (d) As soon as reasonably practicable following receipt of a notice in accordance with Rule 5.1(c), the Chief Executive Officer must:
  - (i) notify the applicant of the Board's decision by registered post; and
  - (ii) where a Membership Application is approved, enter the applicant's name in the Register of Members as an Ordinary Member in accordance with Rule 5.4(a) within 7 days of the applicant becoming an Ordinary Member.
- (e) The Board need not give any reason for rejecting a Membership Application.
- (f) Where a Membership Application is rejected by the Board:
  - (i) the applicant may, within 14 days of receipt of a notice pursuant to Rule 5.1(d), appeal the Board's decision by notice in writing to the Board (**Appeal Notice**);
  - (ii) upon receipt of an Appeal Notice the Board must, at the next General Meeting:
    - (A) include the Membership Application as an item of special business;
    - (B) give the applicant a reasonable opportunity to be heard or make representations in writing; and
    - (C) propose a resolution to either approve or reject the Membership Application; and
  - (iii) where the Members in General Meeting resolve to approve the Membership Application pursuant to Rule 5.1(f)(ii)(C), the Chief Executive Officer must enter the applicant's name in the Register of Members as an Ordinary Member in accordance with Rule 5.4(a) within 7 days of the applicant becoming an Ordinary Member; and
  - (iv) the applicant becomes an Ordinary Member when their application is approved in accordance with either Rules 5.1(c) or 5.1(f)(iii).

## 5.2 Honorary Members

- (a) The Board may appoint any person, whom it wishes to appoint to a Committee, as an Honorary Member from time to time.
- (b) The term of an Honorary Membership is:
  - (i) 12 months; or
  - (ii) as otherwise determined by the Board.
- (c) An Honorary Member is:
  - (i) not required to pay an Annual Subscription;
  - (ii) not entitled to vote at General Meetings other than at meetings of a Committee to which the Honorary Member has been appointed;

- (iii) otherwise entitled to all of the privileges afforded to Ordinary Members; and
  - (iv) bound by these Rules and any other by-laws of the Council for the time being in force.
- (d) The Board must advise the Chief Executive Officer of the appointment of an Honorary Member as soon as reasonably practicable and following such appointment, the Chief Executive Officer must enter the Honorary Member's name in the Register of Members as an Honorary Member in accordance with Rule 5.4(a).

### **5.3 Life Members**

- (a) Any Member who has rendered special and exceptional service to the Council may be elected as a Life Member by resolution of the Board.
- (b) A Life Member is:
  - (i) not liable to pay an Annual Subscription;
  - (ii) entitled to all of the privileges afforded to Ordinary Members; and
  - (iii) bound by these Rules and any other rules and by-laws of the Council for the time being in force.
- (c) The Board must advise the Chief Executive Officer of the appointment of a Life Member as soon as reasonably practicable and following such appointment, the Chief Executive Officer must enter the Life Member's name in the Register of Members as a Life Member in accordance with Rule 5.4(a).

### **5.4 Register of Members**

- (a) The Chief Executive Officer must maintain a Register of Members in accordance with section 53 of the Act which includes each Member's full name, postal, residential or email address and the date of entry into the Register of Members in a form which is readily convertible to written or printed form.
- (b) The Register of Members must be available for inspection by Members at the Registered Office on the giving of reasonable notice to the Chief Executive Officer and the Member may make a copy of or take an extract from the Register of Members but shall have no right to remove the Register of Members for that purpose.
- (c) The Chief Executive Officer must ensure that any change to the membership of the Council is recorded in the Register within 28 days of the change occurring.

## **6. Annual Subscription**

- (a) The Board may from time to time determine the amount of the Annual Subscription to be paid by each Ordinary Member and may fix different Annual Subscriptions for individual Ordinary Members.
- (b) Each Ordinary Member must pay, annually on or before 1 July or such other date as the Board from time to time determines, the amount of the Annual Subscription determined under Rule 6(a).

- (c) An Ordinary Member whose Annual Subscription is more than 3 months in arrears is not entitled to:
  - (i) vote at General Meetings; or
  - (ii) any other privileges generally afforded to Ordinary Members.

## **7. Discipline of a Member**

### **7.1 Termination of Membership**

A person ceases to be a Member if the person:

- (a) dies;
- (b) resigns as a Member by giving written notice to the Chief Executive Officer or another Board Member, in which case, the resignation is effective on the later of the Chief Executive Officer or Board Members' receipt of the notice or such other date as specified in the notice which must be no later than 14 days after the resignation notice is received by the Chief Executive Officer or Board member (as applicable); or
- (c) is expelled pursuant to sub-rule 7.2(b)(v).

### **7.2 Expulsion**

- (a) If the Board is of the opinion that a Member:
  - (i) has refused or neglected to comply with the Rules or any by-laws of the Council for the time being in force; or
  - (ii) is guilty of any conduct unbecoming of a Member, or other conduct that is detrimental to the interests of the Council,

the Chief Executive Officer shall, as soon as practicable, cause to be served on the Member a notice in writing:

  - (iii) setting out the opinion of the Board and the grounds on which it is based;
  - (iv) stating that the Member is required to attend a Board Meeting to be held not less than 14 days and not more than 28 days after service of the notice;
  - (v) stating the date, place and time of the Board Meeting; and
  - (vi) stating that the Member may be represented at the Board Meeting by another person.
- (b) At the Board Meeting held in accordance with sub-rule 7.2(a), having given:
  - (i) the Member the right to be heard; and
  - (ii) due consideration to any written statement provided by the Member,

the Board may:

  - (iii) require the Member to give a written undertaking within 14 days about the Member's future conduct related to the Council;



- (iv) suspend the Member for a specified period; or
- (v) expel the Member,

and the Chief Executive Officer shall cause the Member to be advised promptly of any such resolution by registered post.

## **8. Patron**

The Board may, from time to time, appoint one or more persons as a patron or a vice-patron of the Council.

## **9. Annual General Meeting**

### **9.1 Board to convene**

- (a) The Board must, in each calendar year, convene an Annual General Meeting of the Members within 6 months after the end of the Council's Financial Year or such longer period as may in a particular case be allowed by the Commissioner.
- (b) The Annual General Meeting must be specified as such in the notice convening it.

### **9.2 Business of the Annual General Meeting**

- (a) The ordinary business of the Annual General Meeting is:
  - (i) to approve the minutes of the previous Annual General Meeting;
  - (ii) to receive from the Board any reports on the transactions of the Council during the preceding Financial Year prepared for this purpose;
  - (iii) to receive and consider the financial statements submitted by the Council in accordance with section 70 of the Act;
  - (iv) to consider any proposed alterations to these Rules; and
  - (v) to elect Board Members in accordance with Rule 13.3.
- (b) The Annual General Meeting may transact special business of which notice is given in accordance with these Rules.
- (c) At each Annual General Meeting, the Board shall deliver a report to the Members which, in addition to any other particulars that the Board thinks necessary, shall contain a summary of the activities of the Council for the period since the date of the last report delivered to Members pursuant to this Rule 9.2(c).

## **10. Special General Meetings**

### **10.1 Terminology**

All General Meetings, other than Annual General Meetings, are referred to as Special General Meetings.

## **10.2 Convening a Special General Meeting**

The Board may, whenever it thinks fit, convene a Special General Meeting.

## **10.3 Members may convene a Special General Meeting**

- (a) The Board must, within 30 days of receiving a request in writing from not less than 10 percent of the Members or 25 Members (whichever is greater), convene a Special General Meeting.
- (b) A request for a Special General Meeting must:
  - (i) state the objects of the Special General Meeting;
  - (ii) be signed by the Members making the request; and
  - (iii) be sent to the Registered Office.

## **11. Notice of General Meetings**

- (a) The Board must, at least 21 days before the date fixed for holding a General Meeting, cause to be sent to:
  - (i) each Member at his or her address appearing in the Register of Members; and
  - (ii) the auditor of the Council,

a notice stating the place, date and time of the General Meeting and the nature of the business to be transacted at the General Meeting.
- (b) No business except that set out in the notice convening the General Meeting may be transacted at the General Meeting.
- (c) Any Member who wishes to bring any business before a General Meeting may give written notice of that business to the Board who must use reasonable endeavours to include that business in the notice convening the next General Meeting.
- (d) A Special Resolution may be moved either at a Special General Meeting or at an Annual General Meeting, however the Chief Executive Officer must give Members at least 21 days' notice of the General Meeting at which a Special Resolution is to be proposed. In addition to those matters specified in Rule 11(a), the notice must also include the resolution to be proposed and the intention to propose the resolution as a Special Resolution.

## **12. Proceedings at General Meetings**

### **12.1 Quorum**

- (a) At a General Meeting, 5 Members present in person or by proxy constitutes a quorum.
- (b) No item of business may be transacted at a General Meeting unless a quorum is present during the time when the General Meeting is considering that item.
- (c) If within 15 minutes after the appointed time for a General Meeting to commence, a quorum is not present, the General Meeting:

- (i) if convened pursuant to Rule 10.3, is dissolved; and
  - (ii) in any other case, will stand adjourned to the same day in the next week at the same time and, unless another place is specified by the Chair at the time of the adjournment or by written notice given to Members before the day to which the General Meeting is adjourned, at the same place.
- (d) If at the adjourned General Meeting, a quorum is not present within 15 minutes after the time appointed for the General Meeting to commence, the Members personally present (being at least 2) will be a quorum. If less than 2 Members are personally present at the adjourned General Meeting, the adjourned General Meeting will be dissolved.

## **12.2 Chair**

- (a) Subject to Rules 12.2(b) and 12.2(c), the President must preside at each General Meeting.
- (b) If the President is absent from a General Meeting or unwilling to act, the Vice President must preside over that General Meeting.
- (c) If the President and the Vice President are absent from a General Meeting or unwilling to act, the Members present in person and entitled to vote, must elect another Board Member to preside over that General Meeting.

## **12.3 Minutes of meetings**

The Chief Executive Officer must ensure minutes are kept of all resolutions and proceedings of each General Meeting and Board Meeting.

## **12.4 Voting**

- (a) At a General Meeting:
  - (i) subject to Rule 12.4(a)(iii), an Ordinary Resolution put to the vote will be decided by a majority of votes cast on a show of hands; and
  - (ii) a Special Resolution put to the vote will be decided in accordance with section 51 of the Act by a majority of not less than three fourths of Members present, in person or by proxy who are entitled under the Rules and the Act to vote; and
  - (iii) if a poll is demanded in accordance with Rule 12.5, a resolution will be decided in accordance with Rule 12.5.
- (b) Upon any question arising at a General Meeting, each Member present in person or by proxy and entitled to vote, has one vote.
- (c) All votes must be given personally or by proxy.
- (d) Where the votes on a question are equal, the Chair of the General Meeting does not have a second or casting vote in addition to his or her deliberative vote and the motion is lost.

- (e) A declaration by the Chair that a resolution has been passed at the General Meeting will be evidence of that fact unless, during the General Meeting at which the resolution is submitted, a poll is demanded in accordance with Rule 12.5.

## 12.5 Poll

- (a) If at a General Meeting, a poll is demanded by the Chair or by three or more Members present in person or by proxy, it must:
  - (i) be taken in such manner as the Chair directs; and
  - (ii) the resolution of the poll must be treated as a resolution of the General Meeting on that question.
- (b) A poll that is demanded:
  - (i) on:
    - (A) the election of the Chair; or
    - (B) the question of an adjournment,
 must be taken immediately; and
  - (ii) on any other matter, must be taken before the close of the General Meeting at the time the Chair directs.
- (c) If a poll is demanded and taken under this Rule 12.5 in respect of an ordinary resolution, a declaration by the Chair of the result of the poll is evidence of the matter so declared.

## 12.6 Proxies

- (a) A Member (in this Rule called **the appointing member**) may appoint any Member who is a natural person as its proxy by notice in writing to the Board at least 24 hours before the time of the General Meeting for which the proxy is appointed.
- (b) The notice appointing the proxy must be in the form approved by the Board.

## 13. Board

### 13.1 Power to manage the Council

- (a) The affairs of the Council will be managed exclusively by the Board and, subject to these Rules and the Act, the Board:
  - (i) will be responsible for the ethical and effective conduct of the Council;
  - (ii) may exercise all powers and functions that may be exercised by the Council, except those required by these Rules to be exercised by General Meetings of the Members; and
  - (iii) has the power to do all things that are necessary, desirable, conducive or incidental to the proper management of the business and affairs of the Council.

- (b) The Board shall contain a President and a Vice-President.

### **13.2 Composition of the Board**

- (a) The Board shall comprise of not less than 9 Board Members and not more than 12 Board Members. The Board has power, at its absolute discretion, to determine the number of Board Members to be elected in accordance with this Rule.
- (b) Board Members must also be Members of the Council.
- (c) Employees of the Council are not eligible to be Board Members.
- (d) The Members may, by Ordinary Resolution in General Meeting remove any Board Member from the Board.
- (e) Board Members must be elected to the Board at an Annual General Meeting or may be appointed under Rule 13.3(d).
- (f) Subject to Rule 13.2(h), each Board Member shall, subject to these Rules, be elected at an Annual General Meeting and hold office until the conclusion of the third Annual General Meeting following the date of that Board Member's election but is eligible for re-election as a Board Member at that meeting.
- (g) Where practicable should comprise a mix of people with expertise across the spectrum of Cancer Control as well as people with financial, legal and governance expertise.
- (h) Subject to Rule 13.2(i), a Board Member must not hold their office for more than nine consecutive years, and will be taken to have resigned as a Board Member effective on the conclusion of the ninth Annual General Meeting following the date of the Board Members election.
- (i) Notwithstanding Rule 13.2(h) above, a Board Member may hold office for more than nine consecutive years in accordance with the procedure set out in this Rule 13.2(i). There is no maximum term applicable to any Board Member who continues to hold office in accordance with this Rule 13.2(i).
  - (i) The Board in its discretion may determine by ordinary resolution that it is in the Council's best interest that a Board Member due to retire under Rule 13.2(h) (or due to retire having been re-elected in accordance with this Rule 13.2(i)) should be permitted to stand for re-election.
  - (ii) Any such Board Member who has been approved to stand for re-election under Rule 13.2(i)(i) may only be re-elected by Special Resolution at an Annual General Meeting, and will hold office subject to these Rules until the conclusion of the third Annual General Meeting following the date of their re-election.
- (j) Any Board Member who has exceeded the maximum term in Rule 13.2(h) on the date this constitution is approved by Members will be permitted to stand for re-election to serve an additional term of up to two years, commencing on the date this constitution is approved by Members.

### 13.3 Election of Board Members

- (a) Nominations for Board Member candidates must be:
  - (i) made in writing, signed by two Members and accompanied by the written consent of the candidate (which may be endorsed on the form of nomination); and
  - (ii) delivered to the Chief Executive Officer not less than 21 days before the date fixed for the holding of the Annual General Meeting.
- (b) A person who is eligible for election or re-election under this Rule may:
  - (i) propose or second himself or herself for election or re-election; and
  - (ii) vote for himself or herself.
- (c) If the number of persons nominated for election in accordance with Rule 13.3(a) does not exceed the number of vacancies required to be filled, the President must declare those persons to be duly elected as Board Members at the Annual General Meeting concerned. Otherwise, Board Members shall be elected by a ballot held at the Annual General Meeting in such manner as the Board directs.
- (d) If a vacancy remains on the Board after the application of Rule 13.3(c), or when a casual vacancy within the meaning of Rule 13.4 occurs in the membership of the Board the Board may appoint a Member to fill that vacancy and a Member appointed under this Rule will hold office until the next Annual General Meeting.

### 13.4 Casual vacancies in the Board

A Board Member's office becomes vacant if the Board Member:

- (a) dies;
- (b) resigns by notice in writing delivered to the President or, if the Board Member is the President, to the Vice-President, in which case the resignation is effective on the later of the President's or Board Members' receipt of the notice or such other date as specified in the notice which must be no later than but 14 days after the notice is received;
- (c) is or becomes ineligible to serve as Board Member under the Act;
- (d) is permanently incapacitated by mental or physical ill-health;
- (e) is absent from more than:
  - (i) 3 consecutive Board meetings without tendering an apology that is acceptable to the Board, acting reasonably; or
  - (ii) 3 Board meetings in the same Financial Year without tendering an apology that is acceptable to the Board, acting reasonably to the person presiding at each of those Board meetings;

of which meetings the Board Member received notice, and the Board has resolved to declare the office vacant;

- (f) ceases to be a Member of the Council; or
- (g) is the subject of a resolution passed by a General Meeting of Members terminating his or her appointment as a Board Member.

### **13.5 Payments to Board Members**

Board Members are only entitled to be reimbursed (out of the funds of the Council) for out-of-pocket expenses properly incurred in attending Board Meetings, General Meetings or otherwise performing their duties as a Board Member.

## **14. Proceedings of the Board**

### **14.1 Board meetings**

- (a) The Board must meet together for the dispatch of business as it sees fit and the President, or at least half the Board Members, may at any time convene a meeting of the Board.
- (b) Subject to these Rules, the procedure and order of business to be followed at a Board meeting must be determined by the Board Members present at the Board meeting.

### **14.2 Voting at Board meetings**

- (a) Each Board Member is entitled to one vote.
- (b) Questions arising at a Board Meeting are to be decided on a show of hands, unless the Board determines otherwise from time to time.
- (c) A question arising at a Board Meeting must be decided by a majority of votes.
- (d) If there is no majority of votes pursuant to Rule 14.2(c), the President does not have a casting vote in addition to his or her deliberative vote and the motion is lost.

### **14.3 Quorum**

- (a) At a Board Meeting, one half of the Board Members constitute a quorum.
- (b) No business may be transacted at a Board Meeting unless a quorum is present. If within 15 minutes of the time appointed for a Board Meeting a quorum is not present, the President may adjourn the Board Meeting and reschedule it for a future date.

### **14.4 Chair**

- (a) The chair of the Board shall be the President.
- (b) Subject to Rule 14.4(c), the Chair of the Board must preside at each meeting of the Board.
- (c) If the Chair is absent or unwilling to act at any particular meeting of the Board, then the Vice-President shall preside, or in the absence of the Vice-President, the Board Members must elect one of their number to act as Chair for that meeting.

### **14.5 Meetings by telecommunications**

The Board Members may hold a valid Board Meeting using any medium by which each of the Board Members can simultaneously hear all the other participants (including telephone and video conferencing), and in that case:

- (a) the participating Board Members are taken to be present at the Board meeting for the purposes of these Rules;
- (b) the Board Meeting is taken to be held where the Chair of the Board meeting is; and
- (c) all proceedings of the Board Members conducted in that manner are as valid and effective as if conducted at a Board Meeting at which all of them were present in person.

### **14.6 Written resolutions**

- (a) If a document:
  - (i) states that the signatories to it are in favour of a resolution;
  - (ii) sufficiently identifies the terms of the resolution; and
  - (iii) is signed by all the Board Members entitled to vote on that resolution,

a resolution in those terms is taken to be passed at a Board meeting held at the time when the document was signed by the last Board Member to do so.
- (b) For the purposes of Rule 14.6(a):
  - (i) two or more separate documents containing statements in identical terms each being signed by one or more Board Members together are taken to constitute one document containing a statement in those terms signed by those Board Members on the respective days on which they signed the separate documents;
  - (ii) a signed document may be transmitted to the Council by facsimile or electronic message which is expressed to be sent by or on behalf of a Board Member. The document is taken to be signed by that Board Member at the time of receipt of the facsimile or electronic message by the Council in legible form.

## **15. Implied validity**

Despite any other provisions of these Rules, all decisions and actions at a Board meeting and all actions taken by the Board or a person acting as a Board Member (as a Deputy or otherwise) are as valid as if every person acting as a Board member had:

- (a) been duly appointed;
- (b) duly continued in office; and
- (c) at all material times, been fully entitled to do all things which he or she did or purported to do as a Board Member,



even if it is later discovered that there was a defect in the person's appointment or continuance in office, or that the person had vacated office or was not entitled to do a particular thing.

## **16. Material Personal Interests of Board Members**

- (a) In order to comply with section 42 of the Act, a Board Member who has or believes he or she may have a material personal interest in a matter that is proposed to be considered, or is being considered by the Board (except where that interest exists only by virtue of the fact that the Board Member is also a member of a class of persons for whose benefit the Council is established or where the material personal interest held by the Board Member is shared with all or a substantial proportion of Members), must disclose the nature and extent of his or her interest and details of how the interest relates to the activities of the Council to the Board as soon as he or she becomes aware of the interest.
- (b) If the Board determines that any interest disclosed under Rule 16(a) constitutes a material personal interest in a matter for the purposes of the Act, the relevant Board Member must:
  - (i) not be present while the matter is being considered at the meeting of the Board;
  - (ii) not vote on the matter; and
  - (iii) disclose the nature and extent of his or her interest and details of how the interest relates to the activities of the Council at the next General Meeting.
- (c) If there are not enough Board Members to form a quorum to consider a matter because of Rule 16(a) then one or more Board Members may call a General Meeting and the General Meeting may pass the resolution to deal with the matter.

## **17. Committees**

### **17.1 Delegation**

- (a) The Board may delegate, in writing, to one or more sub-committees (consisting of such Member(s) as the Board thinks fit) the exercise of such functions of the Board as are specified in the delegation other than:
  - (i) the power of delegation; and
  - (ii) a function which is a duty imposed on the Board by the Act or any other law
 (**Committee**).
- (b) Any delegation under Rule 17.1 may be subject to such conditions and limitations as to the exercise of that function or as to time and circumstances as are specified in the written delegation and the Board may continue to exercise any function delegated.
- (c) The Board may, in writing, revoke wholly or in part any delegation under Rule 17.1.

- (d) The Board may name, dissolve and vary the powers and composition of any Committee as the Board thinks fit.

## **17.2 Control of Committees**

- (a) Each member of a Committee holds office on terms decided by the Board.
- (b) A Committee must exercise its powers, and generally conduct itself, in accordance with any directions given by the Board including, but not limited to, any directions concerning keeping minutes and reporting to the Board.

## **17.3 Rules applying to a Committee**

Subject to any directions by the Board, the provisions of these Rules that apply to meetings and resolutions of the Board apply, so far as is reasonable and with any modifications reasonably necessary, to meetings of a Committee.

## **18. Chief Executive Officer**

The Chief Executive Officer must:

- (a) co-ordinate the correspondence of the Council;
- (b) ensure that full and correct minutes of the proceedings of the Board and of the Council are kept;
- (c) comply on behalf of the Council with:
  - (i) section 35 of the Act by keeping and maintaining in an up to date condition the Rules and, upon the request of a Member, must make available those Rules for the inspection of the Member and the Member may make a copy of or take an extract from the Rules but will have no right to remove the Rules for that purpose; and
  - (ii) section 58 of the Act by maintaining a record of:
    - (A) the names and residential, postal or email addresses of the persons who hold the offices of the Council provided for by these Rules, including all offices held by persons who constitute the Board and persons who are authorised to use the common seal of the Council under Rule 22; and
    - (B) the names and residential or postal addresses of any persons who are appointed or act as trustees on behalf of the Council,
 and the Chief Executive Officer must, upon the request of a Member, make available the record for the inspection of the Member and the Member may make a copy of or take an extract from the record but will have no right to remove the record for that purpose;
- (d) unless the Members resolve otherwise at a General Meeting, ensure the safe custody of all books, documents, records and registers of the Council, by keeping all books, documents, records and registers of the Council under their control including those referred to in Rule 18(c); and

- (e) carry out duties as delegated by the Board to pursue the vision and mission of the Council; and
- (f) perform such other duties as are imposed by these Rules on the Chief Executive Officer or as the Board prescribes.

## **19. Finances and Funds**

The Council's Finance Committee: must:

- (a) be responsible for the receipt of all moneys paid to or received by, the Council and must issue receipts for those moneys in the name of the Council;
- (b) pay all moneys referred to in Rule 19(a) into such account or accounts of the Council as the Board may from time to time direct;
- (c) make payments from the funds of the Council with the authority of a General Meeting or of the Board and in so doing ensure that all cheques are signed by Chair of the Finance Committee and at least one other authorised Board Member, or by any two others as are authorised by the Board;
- (d) comply on behalf of the Council with Part 5 of the Act with respect to the accounting records of the Council by:
  - (i) keeping such accounting records as correctly record and explain the financial transactions and financial position of the Council;
  - (ii) keeping its accounting records in such manner as will enable true and fair accounts of the Council to be prepared from time to time;
  - (iii) keeping its accounting records in such manner as will enable true and fair accounts of the Council to be conveniently and properly audited; and
  - (iv) submitting to Members at each Annual General Meeting of the Council accounts of the Council showing the financial position of the Council at the end of the immediately preceding Financial Year; and
- (e) whenever directed to do so by the President, submit to the Board a report, balance sheet or financial statement in accordance with that direction.

## **20. Audit and accounts**

### **20.1 Council must keep accounts**

- (a) The Council must keep accounts in accordance with the requirements of the Act.
- (b) The Council must allow the Members and the auditor to inspect those accounts at all reasonable times.

### **20.2 Audit**

The Board must cause the Council's financial report for each Financial Year to be audited and obtain an auditor's report.

### **20.3 Financial reporting**

The Board must cause the Council to comply with all financial reporting obligations imposed on it under the Act.

## **21. Rules**

### **21.1 Inspection**

The Council shall keep and maintain, in an up to date condition, the Rules and, upon the request of any Member, shall make the Rules available for inspection by that Member and the Member may make a copy of or take an extract from the Rules but shall have no right to remove the Rules for that purpose.

### **21.2 Alteration and rescission**

- (a) The Council may alter or rescind these Rules, or make rules or by-laws additional to these Rules, in accordance with the procedure set out in sections 30, 31 32 and 33 of the Act, which is as follows:
  - (i) Subject to Rules 21.2(a)(iv) and 21.2(a)(v), the Council may alter its Rules by Special Resolution but not otherwise;
  - (ii) Within one month of the passing of a Special Resolution altering its Rules, or such further time as the Commissioner may in a particular case allow (on written application by the Council), the Council must lodge with the Commissioner notice of the special resolution setting out particulars of the alteration, together with a certificate given by a member of the Board certifying that the resolution was duly passed as a Special Resolution, and a copy of the Rules of the Council including all alterations to which the Special Resolution relates;
  - (iii) An alteration of the Rules of the Council does not take effect until Rule 21.2(a)(ii) is complied with;
  - (iv) An alteration of the Rules having effect to change the name of the Council does not take effect until Rules 21.2(a)(i) to 21.2(a)(iii) are complied with and the approval of the Commissioner is given to the change of name; or
  - (v) An alteration of the Rules having effect to change the objects or purposes of the Council does not take effect until Rules 21.2(a)(i) to 21.2(a)(iii) are complied with, and the approval of the Commissioner is given to the alteration of the objects or purposes.

### **21.3 Rules are binding**

These Rules bind every Member and the Council to the same extent as if every Member and the Council had signed and sealed these Rules and agreed to be bound by all their provisions.

## **22. Execution of Documents**

- (a) The Council need not have or use a common seal to execute documents or deeds. The Board may resolve whether or not the Council is to have or use a common seal.

- (b) The Council may execute document without using a common seal if the document is signed by:
  - (i) two Board Members; or
  - (ii) one Board Member and the Chief Executive Officer or some other person authorised by the Board.
- (c) Where the Council has a common seal:
  - (i) the Council's corporate name must appear on the seal in legible characters;
  - (ii) the common seal of the Council may only be used if the Board authorises the use of the seal, and the affixing of the common seal is witnessed by:
    - (A) the Chief Executive Officer and a Board Member; or
    - (B) any two Board Members;
  - (iii) the Chief Executive Officer must maintain a register of all documents to which the common seal has been affixed; and
  - (iv) the common seal of the Council must be kept in the custody of the Chief Executive Officer or of such other person as the Board from time to time decides.

## **23. Records of Council**

### **23.1 Record of office holders**

The Council shall maintain a record of:

- (a) the names and residential, postal or email addresses of the persons who hold the offices of the Council provided for by these Rules, including all Board Members and persons who are authorised to use the common seal in accordance with 22 and
- (b) the names and residential, postal or email addresses of any persons who are appointed to act as trustees on behalf of the Council,

and the Council shall, upon the request of a Member, make available the record for the inspection of that Member and the Member may make a copy of, or take an extract from, the record but shall have no right to remove the record for that purpose.

### **23.2 Custody**

The Chief Executive Officer or such other person as the Board from time to time decides must ensure the safe custody of all books, documents, records and registers of the Council, by keeping all books, documents, records and registers of the Council under their control.

### **23.3 Inspection**

A Member may at any reasonable time inspect, without charge, the books, documents, records and securities of the Council by notice in writing to the Chief Executive Officer.

## 24. Notices

- (a) Any notice or other communication to a Member under these Rules may be given by personal service, posted or emailed to the address specified in the Register of Members or to any other address last notified by the Member to the Council.
- (b) Any notice given to a Member is deemed to be given by the Council and received by that Member:
  - (i) if delivered in person, when delivered to the Member;
  - (ii) if posted, at 9.00 am on the second Business Day after the date of posting to the Member whether delivered or not; or
  - (iii) if emailed, on the date of transmission provided that a delivery receipt is obtained by the sender party

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00 pm (Member's time), it is deemed to have been received at 9.00 am on the next Business Day.
- (c) A certificate signed by the Chief Executive Officer that a notice was posted to a Member is conclusive evidence thereof.

## 25. Disputes and mediation

- (a) The grievance procedure set out in this Rule applies to disputes under these rules between:
  - (i) a Member and another Member; or
  - (ii) a Member and the Council; or
  - (iii) if the Council provides services to non-members, those non-members who receive services from the Council, and the Council.
- (b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.
- (c) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.
- (d) The mediator must be:
  - (i) a person chosen by agreement between the parties; or
  - (ii) in the absence of agreement:
    - (A) in the case of a dispute between a Member and another Member, a person appointed by the Board; and

- (B) in the case of a dispute between a Member or relevant non-member (as defined by sub-rule 25(a)(iii)) and the Council, a person who is a mediator appointed to, or employed with, a not for profit organisation.
- (e) A Member can be a mediator.
- (f) The mediator cannot be a Member who is a party to the dispute.
- (g) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (h) The mediator, in conducting the mediation, must:
  - (i) give the parties to the mediation process every opportunity to be heard;
  - (ii) allow due consideration by all parties of any written statement submitted by any party; and
  - (iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (i) The mediator must not determine the dispute.
- (j) The mediation must be confidential and without prejudice.
- (k) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

## **26. Indemnity and insurances**

### **26.1 Indemnity**

To the extent permitted by law, the Council may indemnify a person who is or has been an officer of the Council against a liability incurred by that person in his or her capacity as an officer of the Council:

- (a) to any other person; and
- (b) for costs and expenses in defending proceedings, whether civil or criminal, in which judgement is given in favour of that person or in which that person is acquitted or in connection with an application, in relation to those proceedings, in which the court grants relief to that person,

so far as the liability is not covered by a contract of insurance taken out by any person for the benefit of that officer.

### **26.2 Insurance**

The Council may pay, agree to pay, or reimburse another person who has paid, a premium in respect of a contract insuring a person who is or has been an officer of the Council against a liability incurred by that person as an officer of the Council, except in circumstances prohibited by law.

**27. Distribution of surplus property on winding up of the Council**

If upon the winding up or dissolution of the Council there remains after satisfaction of all its debts and liabilities any property whatsoever, the same must not be paid to or distributed among the members, or former Members. The surplus property must be given or transferred to another association incorporated under the Act which has similar objects and which is not carried out for the purposes of profit or gain to its individual members, and which association shall be determined by resolution of the Members.



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