

# Play Australia (IPA Australia) Incorporated

Reg. No. A0000697C, ABN 54 015 468 405

## CONSTITUTION

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**PART 2 – NAME AND PURPOSES**

**2. Name**

- 2.1 The name of the incorporated association is “Play Australia (IPA Australia) Incorporated”.
- 2.2 The name and registration number of the association must appear in legible characters in all notices, advertisements and other official publications of the association, and in all its business documents.

See section 23 of the Act\*.

**3. Purposes**

The purposes of the association are:

- (1) to promote the value of play for children, young people and the wider community;
- (2) to inspire active healthy outdoor play opportunities that are accessible to all;
- (3) to be the peak body advocating for and supporting the value of play locally and nationally;
- (4) to advance the implementation of Article 31 of the United Nations Convention on the Rights of the Child; and
- (5) to be the Australian Secretariat of the International Play Association (IPA).

**4. Legal Capacity and Powers**

- 4.1 The association has the legal capacity of an incorporated body.  
See section 29(2) of the Act\*.
- 4.2 The association has power to do anything incidental or conducive to the attainment of its purposes.  
See section 30(d) of the Act\*.

- 4.3 The association may only:
  - (a) exercise its powers; and
  - (b) use its income and assets (including any surplus);for its purposes.

**5. Not For Profit Organisation**

- 5.1 The association must not distribute any surplus, income or assets directly or indirectly to its members.  
See section 33 of the Act\*.
- 5.2 Clause 5.1 does not prevent the association from paying its members:
  - (a) reimbursement for expenses properly incurred by them, and
  - (b) for goods supplied and services provided by them,if this is done in good faith on terms no more favourable than if the member were not a member.  
See section 4 of the Act\*.

**PART 3 – MEMBERSHIP**

**6. Eligibility**

- 6.1 Any person who supports the purposes of the association is eligible for membership.
- 6.2 In clause 6.1, “person” includes an individual, incorporated body or unincorporated body, and part of an incorporated or unincorporated body, subject to clause 6.3.
- 6.3 An unincorporated body, or part of an incorporated or unincorporated body may only become a member by nominating an individual or incorporated body to be a member on its behalf.
- 6.4 In this constitution, unless the contrary intention appears, “member” includes an unincorporated body, or part of an incorporated or unincorporated body represented by a member in accordance with clause 6.3.

## 7. Applications

Applications for membership must be:

- (a) in writing\*, stating that the applicant:
  - (i) wishes to become a member of the association;
  - (ii) supports the purposes of the association; and
  - (iii) agrees to comply with the constitution and regulations\* of the association;
- (b) accompanied by the first subscription; and
- (c) given to the association.

## 8. Approval

8.1 The Board must:

- (a) by resolution approve or reject the application; and
- (b) notify the applicant in writing\* whether the application has been approved or rejected.

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

8.3 If the Board approves the application:

- (a) the applicant becomes a member from the date of the Board meeting; and
- (b) the name and address of the new member, and the date of becoming a member must be entered in the register of members.

8.4 If the Board rejects the application, it must return the subscription to the applicant.

## 9. Subscriptions

9.1 The Board must by regulation\* set the subscription.

9.2 The amount of the subscription and the date for payment may vary according to criteria set by the Board in the regulation\*.

9.3 The voting and other rights of members who have not paid the subscription by the date for payment are suspended until the subscription is paid.

9.4 Except for the subscription, there are no entrance fees or other amounts to be paid in respect of membership of the association.

## 10. Rights, Obligations and Liability

10.1 The rights of members include:

- (a) to submit items of business for consideration at general meetings under clause 18.3;
- (b) to receive notice of general meetings under clause 18;
- (c) to participate in general meetings under clause 24;
- (d) to elect the Board under clause 27; and
- (e) to have access to the records of the association under clause 60.

See sections 53, 57, 60 and 61 of the Act\*.

10.2 The rights of members are not transferable, and end when the member ceases to be a member in accordance with clause 13.

10.3 By becoming and remaining members, members agree to support the purposes of the association.

10.4 Members must at all times comply with the constitution and regulations\*.

10.5 This constitution is an enforceable contract between the association and each member.

See sections 46 and 67 of the Act\*.

10.6 Members (including Board members) are not liable to contribute to the debts and liabilities of the association only because of their membership.

See section 52(1) of the Act\*.

## 11. Disciplinary Action

11.1 The Board may by resolution passed by an absolute majority\* reprimand, suspend or expel a member for:

- (a) failing to comply with the constitution or regulations\*; or
- (b) conduct prejudicial to the association.

11.2 The Board must not pass a resolution under clause 11.1 unless the member concerned has been:

- (a) informed of the grounds for the proposed disciplinary action; and
- (b) given a reasonable opportunity to be heard.

See section 54(3)(a) of the Act\*.

11.3 The Board:

- (a) may delegate its powers under this clause to a disciplinary committee appointed by the Board; and
- (b) must do so if any Board member is biased against (or in favour of) the member concerned.

See section 54(3)(b) of the Act\*.

11.4 The members of the disciplinary committee:

- (a) need not be Board members or members of the association; but
- (b) must not be biased against (or in favour of) the member concerned.

See section 54(3)(b) of the Act\*.

11.5 Clauses 11.1 and 11.2 apply to the disciplinary committee in the same way as the Board.

11.6 The disciplinary procedure under this clause must be completed as soon as is reasonably practicable.

See section 54(3)(c) of the Act\*.

11.7 The association must not take disciplinary action under this clause against a member who is involved in the grievance procedure under clause 15 until the grievance procedure has been completed.

Compare section 55(4) of the Act\*.

11.8 The association may not fine members.

## 12. Resignation

12.1 Members may resign by writing\* to the association.

12.2 Members whose subscriptions are more than 1 year in arrears are taken to have resigned.

## 13. Cessation

13.1 Members cease to be members on resignation, expulsion or ceasing to exist.

13.2 If a member ceases to be a member:

- (a) the date of ceasing to be a member must be entered in the register of members; and
- (b) the address and date of becoming a member of the former member must be removed from the register of members;

within 14 days.

See sections 56(3) and 56(4) of the Act\*.

## 14. Register of Members

14.1 The Board must ensure that a register is kept containing:

- (a) for current members:
  - (i) the name of the member,
  - (ii) the address for notices last given by the member, and
  - (iii) the date of becoming a member; and
- (b) for former members:
  - (i) the name of the member, and
  - (ii) the date of ceasing to be a member.

See section 56 of the Act\*.

14.2 Members may inspect and obtain copies of the register in accordance with clause 60.

See section 57 of the Act\*.

## 15. Grievance Procedure

15.1 The grievance procedure in this clause applies to disputes under this constitution between:

- (a) a member and another member, and
- (b) a member and the Board or the association.

15.2 The parties must first attempt to resolve the dispute themselves.

15.3 If the parties are unable to resolve the dispute, the Board must appoint a conciliator and arbitrator (in this clause, “conciliator”).

15.4 The conciliator:

- (a) must not have a personal interest in the dispute;
- (b) must not be biased in favour of or against any party;

See section 55(3)(b) of the Act\*.

- (c) may be a member or former member of the association; and

- (d) if possible, must be appointed with the agreement of all parties.

15.5 The conciliator must conduct a conciliation at which each party is given a reasonable opportunity to be heard.

See section 55(3)(a) of the Act\*.

15.6 The parties must in good faith attempt to resolve the dispute by conciliation.

- 15.7 The conciliator may during, and must at the end of, the conciliation attempt to resolve the dispute by agreement between the parties.
- 15.8 If the conciliator is unable to resolve the dispute by agreement between the parties, the conciliator must determine the respective rights and obligations under this constitution of the parties and any other members.
- 15.9 A determination of a conciliator under clause 15.8 is binding on the parties and all members.
- 15.10 A party may appoint another person to act on its behalf in the grievance procedure.  
See section 55(2) of the Act\*.
- 15.11 A member who is the subject of a disciplinary procedure under clause 11 must not initiate the grievance procedure under this clause until the disciplinary procedure has been completed.  
See section 54(4) of the Act\*.
- 15.12 The State, Territory and Commonwealth Acts applying to commercial arbitrations do not apply to the grievance procedure in this clause.

#### **PART 4 – GENERAL MEETINGS**

### **16. Annual General Meeting**

- 16.1 The Board must convene\* an annual general meeting each year.  
See section 63(1) of the Act\*.
- 16.2 The annual general meeting must be held within 5 months after the end of the association's financial year under clause 53.  
See section 63(4) of the Act\*.
- 16.3 At the annual general meeting, the Board must submit to the members:
- (a) the financial statements for the last financial year prepared in accordance with clause 56, and
  - (b) the accompanying audit report in accordance with clause 57.
- Compare sections 94, 97 and 100 of the Act\*.

- 16.4 The ordinary business of the annual general meeting is:
- (a) to verify the minutes of:
    - (i) the last annual general meeting, and
    - (ii) any special general meetings since the last annual general meeting;
  - (b) to consider the annual report of the Board on the activities of the association during its last financial year; and
  - (c) to consider the financial statements and accompanying audit report.
- 16.5 The annual general meeting may only consider other business of which notice has been given in accordance with clause 18.2(c).
- 16.6 At, or as soon as practicable after, the conclusion of the annual general meeting, a Board member must certify in the form approved by the Registrar\* that:
- (a) the Board member attended the annual general meeting; and
  - (b) the financial statements were submitted to the members at the annual general meeting.
- See sections 94(3), 97(3) and 100(3) of the Act\*.
- 16.7 The Secretary must lodge with the Registrar\*:
- (a) an annual statement in the form approved by the Registrar\*,
  - (b) the financial statements and accompanying audit report, and
  - (c) a statement of the terms of any resolution passed at the annual general meeting concerning the financial statements,
- within 1 month after the annual general meeting.  
See section 102 of the Act\*.
- ### **17. Special General Meetings**
- 17.1 The Board may by resolution convene\* a special general meeting whenever it considers appropriate.
- 17.2 The Board must convene\* a special general meeting if requested in writing\* by at least 25% of members entitled to vote.

- 17.3 The request:
- (a) must state the business to be considered at the meeting, including any resolution to be proposed;
  - (b) may consist of multiple copies of the same document;
  - (c) must include the names, addresses and signatures of the members making the request; and
  - (d) must be given to the association.
- 17.4 If the Board does not arrange for the special general meeting to be held within 6 weeks of the request being made, the members making the request (or any of them) may convene\* the special general meeting.
- 17.5 A special general meeting convened by members under clause 17.4:
- (a) must be held within 3 months of the original request having been made; and
  - (b) may only consider the business stated in the original request.
- 17.6 The association must reimburse all reasonable expenses incurred by the members convening a special general meeting under clause 17.4.
- 17.7 Special general meetings may only consider business of which notice has been given in accordance with clause 18.2(c).

## 18. Notice

- 18.1 At least 21 days notice in writing\* of general meetings must be given to each member entitled to vote.

See section 60 of the Act\*.

- 18.2 The notice must state:
- (a) the date, time and place (or places) of the meeting,  
See section 60(a) of the Act\*.
  - (b) if the meeting is to be held at more than 1 place – the technology that will be used,
  - (c) the general nature of each item of business to be considered, and

- (d) if a special resolution\* is to be proposed:
  - (i) the proposed resolution in full, and
  - (ii) the intention to propose the resolution as a special resolution\*.

See section 64(3) of the Act\*.

- 18.3 The notice must include under clause 18.2(c) any item of business that any member has requested in writing\* be considered at least 28 days before the notice is sent.

- 18.4 The notice must also include:

- (a) a statement that members that are incorporated bodies may appoint a representative to attend, speak and vote on their behalf in accordance with clause 19,
- (b) a statement that:
  - (i) all members may appoint a proxy to attend, speak and vote instead of the member in accordance with clause 20, and
  - (ii) proxies must be members of the association, and
- (c) a copy of clauses 19 and 20.

- 18.5 The notice may include forms of appointment for the purposes of clauses 19 and 20, but members are not required to use the forms.

- 18.6 Despite clause 18.1, the accidental omission to give notice of the meeting to a member or members, or the non-receipt by a member or members of notice of the meeting does not invalidate the meeting.

## 19. Representatives

- 19.1 Members that are incorporated bodies may appoint individuals to represent them at general meetings.

- 19.2 Appointments of representatives must be:

- (a) in writing\*, naming the individual (or individuals, in order) appointed;
- (b) sealed by, or signed on behalf of, the member making the appointment; and
- (c) sent to the association or given to the chair of the meeting before the commencement of the meeting.

- 19.3 Representatives may exercise all the rights of members under this Part.

## 20. Proxies

- 20.1 Members may only appoint other members as proxies.
- 20.2 Appointments of proxies must be:
- (a) in writing\*, naming the member (or members, in order) appointed;
  - (b) signed by the member making the appointment; and
  - (c) sent to the association or given to the chair of the meeting before the commencement of the meeting.

## 21. Use of Technology

General meetings may be held at more than 1 place, provided that the technology used enables each member present at all places the meeting is held to communicate clearly and simultaneously with every other such member.

See section 62 of the Act\*.

## 22. Quorum

- 22.1 The quorum for consideration of the ordinary business of the annual general meeting is the presence in person or by representative of at least 10 members entitled to vote.
- 22.2 The quorum for consideration of a proposed resolution (including a special resolution) recommended by the Board is the presence in person, by representative or by proxy of at least 5% of members entitled to vote.
- 22.3 The quorum for the consideration of all other business at general meetings is the presence in person, by representative or by proxy of at least 25% of members entitled to vote.
- 22.4 If a quorum is not present within 30 minutes from the time of the meeting of which notice has been given, the meeting must not proceed.

## 23. Chairing

- 23.1 The President is entitled to chair general meetings.
- 23.2 If the President is not present, or does not wish to chair the meeting, the Vice-President is entitled to chair.

- 23.3 If neither the President nor the Vice-President is present, or if neither wishes to chair the meeting, the meeting must elect another member to chair.

- 23.4 The chair of the meeting does not have a casting vote.

## 24. Participation

All members are entitled to attend and speak and vote at general meetings, except those whose rights have been suspended under clause 9.3 or 11.1.

See section 61 of the Act\*.

## 25. Voting

- 25.1 Each member has 1 vote.
- 25.2 Members may vote in person, by representative or by proxy.
- 25.3 Voting is by show of hands, unless a count is demanded.
- Compare section 65(2) of the Act\*.
- 25.4 Any member entitled to vote (including the chair of the meeting) may demand a count before or immediately after the declaration of the result on a show of hands.
- Compare section 65(3) of the Act\*.
- 25.5 If a count is demanded, the votes of each member must be counted, as directed by the chair of the meeting.
- 25.6 If an equal number of votes are cast for and against a motion or amendment, the chair of the meeting must declare the motion or amendment lost.
- 25.7 The declaration by the chair of the meeting of the result of the vote is conclusive evidence of that result.
- Compare section 65(1) of the Act\*.

## PART 5 – THE BOARD

## 26. Membership

The Board has:

- (a) 9 elected Board members – 3 elected each year under clause 27, with staggered 3 year terms; and
- (b) up to 3 co-opted Board members – appointed under clause 29.

## **27. Election**

- 27.1 Only individuals who are:
- (a) members entitled to vote at the close of nominations; and
  - (b) not employees of the association;
- are eligible to be elected as Board members.
- 27.2 An elected Board member who has held office for 3 consecutive terms (not including part of a term filled as a casual vacancy) is not eligible to be re-elected without a break of at least 1 year.
- 27.3 At least 7 weeks before the annual general meeting notice in writing\* of the close of nominations must be given to each member entitled to vote. The notice may include a nomination form.
- 27.4 The Board may by regulation\* prescribe a nomination form for the purposes of this clause, in which case nominations must be in the prescribed form.
- 27.5 Nominations must be received by the association no later than 5.00 pm on the last business day 5 weeks before the annual general meeting.
- 27.6 Either the original nomination must be received, or a copy received electronically in accordance with the regulations\*.
- 27.7 The Board must by regulation\* provide for candidate statements and photographs to be submitted before the close of nominations and published to members before the ballot opens.
- 27.8 If the number of nominations received is 3 or fewer, those candidates are elected.
- 27.9 If the number of nominations received is more than 3, a ballot must be held in accordance with clause 28.

## **28. Ballot**

- 28.1 The ballot must be a secret ballot.
- 28.2 The ballot may be conducted by post, online, or by any other means approved by the Board by regulation\*.
- 28.3 All members at the close of nominations are entitled to vote, except those whose rights have been suspended under clause 9.3 or 11.1.

- 28.4 Notice in writing\* of the ballot must be given to all members entitled to vote before the ballot opens.
- 28.5 The ballot must remain open for at least 2 weeks.
- 28.6 Each member may only vote once.
- 28.7 The voting system is first past the post.
- 28.8 Members may vote for up to 3 candidates.
- 28.9 The ballot must close at 5.00 pm on the last business day 1 week before the annual general meeting.
- 28.10 The 3 candidates who receive the most votes are elected, subject to clause 28.11.
- 28.11 If 2 or more candidates receive the same number of votes, and 1 or some but not all of those candidates must be elected, the candidate or candidates to be elected must be decided by lot.

## **29. Co-option**

- 29.1 The Board may:
- (a) at its first meeting after each annual general meeting, and
  - (b) at any subsequent meeting,
- co-opt up to 3 additional Board members.
- 29.2 Only individuals who:
- (a) have relevant experience and expertise;
  - (b) are (or become) members; and
  - (c) are not employees of the association;
- are eligible to be co-opted.
- 29.3 The Board may by resolution decide when the term of office of a co-opted Board member is to begin and end.
- 29.4 Before co-opting Board members, the association may call for expressions of interest, by advertisement or otherwise.

## **30. Term of Office**

- 30.1 Elected Board members hold office:
- (a) from the end of the first annual general meeting after they are elected,
  - (b) until the end of the fourth annual general meeting after they are elected,
- subject to clauses 30.3–30.6.

30.2 Co-opted Board members hold office:

- (a) from the time they are co-opted,
- (b) until the end of the annual general meeting after they are co-opted,

subject to clauses 29.3 and 30.3–30.6.

30.3 Board members may be re-elected and co-opted again, subject to clause 27.2.

30.4 Board members may resign by writing\* to the Board.

See section 78(2)(a) of the Act\*.

30.5 Board members cease to be Board members if they:

- (a) cease to be a member of the association;
- (b) become an employee of the association;
- (c) fail to attend 3 consecutive Board meetings without leave of absence under clause 48;

- (d) become insolvent under administration; or

See section 38 of the Victorian *Interpretation of Legislation Act 1984*.

- (e) become a represented person under the Victorian *Guardianship and Administration Act 1986*.

See section 78(2) of the Act\*.

30.6 A general meeting may by resolution passed by a simple majority:

- (a) remove any Board member; and
- (b) fill the resulting vacancy.

Compare section 78(2)(b) of the Act\*.

30.7 If there is a vacancy in its membership (including a vacancy in accordance with clause 30.6(a) not filled under clause 30.6(b)), the Board may appoint an individual who would be eligible to be elected under clauses 27.1 and 27.2 to fill the vacancy for the remainder of the term of office.

30.8 The Board may continue to act despite any vacancy in its membership.

30.9 Even if it is subsequently found that a person who has acted as a Board member was not properly elected or appointed, the validity of:

- (a) the acts of that person as a Board member, and

- (b) decisions of Board meetings in which that person has participated,

is not affected.

### **31. Responsibility and Powers**

31.1 The Board is responsible for both the governance and management of the association.

31.2 The Board must by regulation\* delegate the management of the association to the Executive Director.

31.3 The Board may exercise all powers of the association on its behalf.

31.4 The Board may delegate its powers as it considers appropriate.

31.5 No delegation by the Board under this clause limits the duties and liability of each Board member.

### **32. Committees**

The Board may establish committees with such membership and terms of reference as it considers appropriate.

### **33. Regulations**

33.1 The Board may by resolution passed by an absolute majority\* make regulations to give effect to this constitution.

33.2 Members must at all times comply with the regulations as if they formed part of this constitution.

### **34. Public Statements**

34.1 The Board may by regulation\* or resolution authorise an office-bearer, employee or representative of the association to make public statements on behalf of the association.

34.2 No person may make any public statement on behalf of the association unless authorised by the Board.

### **35. Duties**

35.1 Board members and former Board members must not make improper use of:

- (a) their position, or
- (b) information acquired by virtue of holding their position,

so as:

- (c) to gain an advantage for themselves or any other person; or
- (d) to cause detriment to the association.

See section 83 of the Act\*.

35.2 Board members must exercise their powers and discharge their duties with reasonable care and diligence.

See section 84 of the Act\*.

35.3 Board members must exercise their powers and discharge their duties:

- (a) in good faith in the best interests of the association; and
- (b) for a proper purpose.

See section 85 of the Act\*.

### **36. Indemnity**

The association indemnifies Board members against any liability incurred in good faith by them in the course of performing their duties.

See section 87 of the Act\*.

## **PART 6 – OFFICE-BEARERS**

### **37. Positions**

The office-bearers of the association are:

- (a) the President,
- (b) the Vice-President,
- (c) the Treasurer, and
- (d) the Secretary.

### **38. Election**

38.1 The Board must at its first meeting after the annual general meeting each year elect the office-bearers (other than the Secretary) from among the Board members.

38.2 Office-bearers may be re-elected.

### **39. Term of Office**

39.1 Office-bearers hold office from the time of their election until their successor is elected, subject to clauses 39.2–39.5.

39.2 Office-bearers may resign by writing\* to the Board.

39.3 Office-bearers who cease to be Board members, other than by the expiry of their term of office, cease to be office-bearers.

39.4 Office-bearers may be removed by resolution of the Board passed by an absolute majority\*.

39.5 The Board must as soon as practicable fill vacancies in office-bearer positions for the remainder of the term.

39.6 This clause does not apply to the Secretary.

### **40. Secretary**

40.1 The Executive Director is the Secretary of the association, subject to clauses 40.5–40.8 and 51.3(b).

40.2 The Secretary is the secretary of the association for the purposes of the Act\*.

40.3 The Secretary must notify the Registrar\* of:

- (a) their appointment, and
- (b) any change of address, within 14 days.

See sections 74 and 74A of the Act\*.

40.4 The Secretary whose appointment was last notified to the Registrar\* remains the secretary of the association in some circumstances under the Act\* until the appointment of a new Secretary is notified.

See section 215 of the Act\*.

40.5 The Secretary may resign by writing\* to the Board.

See section 78(2)(a) of the Act\*.

40.6 A general meeting may by special resolution\* remove the Secretary.

See section 78(2)(b) of the Act\*.

40.7 The Board must fill any vacancy in the position of Secretary within 14 days.

See section 73 of the Act\*.

40.8 If the position of Executive Director is vacant, the Board may appoint another employee or a Board member as acting Secretary until the vacancy is filled.

## **PART 7 – BOARD MEETINGS**

### **41. Convening**

- 41.1 The Secretary, President or any 4 Board members may convene\* a Board meeting.
- 41.2 Ordinary Board meetings must be held at least 4 times each year.
- 41.3 At its first meeting after the annual general meeting each year the Board must by resolution set the dates, times and places of ordinary Board meetings until the next annual general meeting.
- 41.4 The Board may by resolution subsequently change the dates, times and places of ordinary meetings.

### **42. Notice**

- 42.1 Each Board member must be given at least 7 days notice in writing\* of Board meetings, subject to clause 42.4.
- 42.2 Notice may be given of more than 1 Board meeting at the same time.
- 42.3 The notice must state the date, time and place (or places) of the meeting, but need not include the business to be considered.
- 42.4 In cases of urgency a meeting may be held without the notice required by clause 42.1, provided that:
  - (a) as much notice as practicable is given to each Board member by the quickest practicable means; and
  - (b) resolutions may only be passed by an absolute majority\*.

### **43. Use of Technology**

- 43.1 Board meetings may be held at more than 1 place, provided that the technology used enables each Board member present at all places the meeting is held to communicate clearly and simultaneously with every other such Board member.

See section 79 of the Act\*.

- 43.2 Without limiting clauses 42.4(a) and 43.1, Board meetings may be convened\* and held by telephone.

### **44. Quorum**

The quorum for Board meetings is the presence in person of a majority of Board members at the time.

### **45. Chairing**

- 45.1 The President is entitled to chair Board meetings.
- 45.2 If the President is not present, or does not wish to chair the meeting, the Vice-President is entitled to chair.
- 45.3 If neither the President nor the Vice-President is present, or if neither wishes to chair the meeting, the Board must elect another Board member to chair.
- 45.4 The chair of the meeting does not have a casting vote.

### **46. Voting**

- 46.1 Each Board member has 1 vote.
- 46.2 There is no voting by proxy.
- 46.3 If an equal number of votes are cast for and against a motion or amendment, the chair of the meeting must declare the motion or amendment lost.

### **47. Conflict of Interest**

- 47.1 Board members who have a material personal interest in a matter that is being considered at a Board meeting must:
  - (a) disclose the nature and extent of their interest:
    - (i) to the Board as soon as they become aware of the interest; and
    - (ii) at the next general meeting;
  - (b) not be present while the matter is being considered at the meeting; and
  - (c) not vote on the matter.

See sections 80 and 81 of the Act\*.

- 47.2 Clause 47.1 does not apply to material personal interests that:

- (a) exist only because the Board member belongs to a class of persons for whose benefit the association is established; or
- (b) the Board member has in common with all or a substantial proportion of the members of the association.

See sections 80 and 81 of the Act\*.

### **48. Leave of Absence**

- 48.1 The Board may by resolution grant Board members leave of absence from Board meetings for up to 3 months.

48.2 The Board may not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Board member concerned to seek leave of absence in advance.

#### **49. Resolutions without Meeting**

49.1 A resolution agreed to in writing\* by all Board members has the same effect as a resolution passed at a Board meeting.

49.2 In clause 49.1, “all Board members” does not include those Board members who:

- (a) would be prohibited by clause 47.1(c) from voting on the matter at a Board meeting; or
- (b) have leave of absence from Board meetings under clause 48.

### **PART 8 – BRANCHES**

#### **50. Branches**

50.1 The Board may by regulation\* establish Branches of the association in the States and Territories.

50.2 Each Branch must have a Branch Committee constituted in accordance with the regulations\*.

50.3 Each Branch must have Branch office-bearers elected or appointed in accordance with the regulations\*.

50.4 The regulations\* under clauses 50.2 and 50.3 must specify the responsibilities and powers (if any) of the Branch Committee and the Branch office-bearers.

50.5 To avoid doubt, the funds and other property of the Branches belong to the association and are subject to the control of the Board and the Executive Director.

### **PART 9 – FINANCIAL AND LEGAL**

#### **51. Executive Director**

51.1 The Board must appoint a Executive Director of the association.

51.2 The Executive Director is responsible to the Board for the management of the association.

51.3 The Executive Director:

- (a) must be the Secretary of the association; and

(b) ceases to be the Secretary on ceasing to be Executive Director.

51.4 The Executive Director must attend all Board meetings, unless excused or requested not to by the Board.

#### **52. Sources of Funds**

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

#### **53. Financial Year**

The financial year of the association is from 1 July to 30 June, unless the Board by regulation\* adopts a different financial year.

#### **54. Management of Funds**

54.1 The Board is responsible for the management of the funds of the association.

54.2 The association must keep financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared in accordance with clause 56.

See section 89(1) of the Act\*.

54.3 All money received by or on behalf of the association must be deposited without delay into a bank account in the name of the association.

#### **55. Payments**

55.1 All payments by the association must be:

- (a) specifically authorised in writing\*, and
- (b) in the case of cheques – signed, by at least 2 persons nominated by the Board by regulation\* or resolution.

55.2 The Board may nominate a list of individuals or positions for the purposes of clause 55.1.

55.3 Signatories must not sign cheques until the payee and amount have been written in.

55.4 This clause does not apply to credit card and petty cash payments where the amount is within limits set by the Board by regulation\* or resolution.

## **56. Financial Statements**

56.1 As soon as practicable after the end of the association's financial year under clause 53, the Board must cause financial statements of the association for that year to be prepared in accordance with this clause.

See sections 92(1), 95(1) and 98(1) of the Act\*.

56.2 The financial statements must be prepared in accordance with the Australian Accounting Standards. This clause applies even if the association is a tier one association under the Act\*.

Compare sections 92(2)(a), 95(2)(a) and 98(2)(a) of the Act\*.

56.3 The financial statements must contain particulars of:

- (a) the income and expenditure of the association during and at the end of its last financial year,
- (b) the assets and liabilities of the association at the end of its last financial year,
- (c) the mortgages, charges and securities of any description affecting any property of the association at the end of its last financial year,
- (d) the same particulars in respect of each trust of which the association was trustee during any part of its last financial year, and
- (e) any trust, held on behalf of the association by a person or body other than the association, in which funds or assets of the association are placed.

See section 101(1) of the Act\*.

56.4 The financial statements must also deal with any matters prescribed by the regulations under the Act\*.

See sections 92(2)(b), 95(2)(b) and 98(2)(b) of the Act\*.

56.5 The financial statements must have a certificate attached in the form prescribed under the Act\* signed by 2 Board members in accordance with a resolution of the Board certifying that the financial statements give a true and fair view of the financial position and performance of the association during and at the end of its last financial year.

Compare sections 94(2)(b), 97(2)(b) and 100(2)(b) of the Act\*.

56.6 The Board must submit the financial statements (including the attached certificate) to the annual general meeting under clause 16.3(a).

See sections 94, 97 and 100 of the Act\*.

## **57. Audit**

57.1 The Board must:

- (a) have the financial statements audited in accordance with the Act\*; and
- (b) submit the audit report to the annual general meeting under clause 16.3(b).

Compare sections 99 and 100(2)(c) of the Act\*.

57.2 An auditor may only be removed by a general meeting in accordance with the procedure set out in the Act\*.

See sections 106 and 107 of the Act\*.

57.3 This clause applies even if the association is not a tier three association under the Act\*.

## **58. Minutes**

58.1 The Board must ensure that minutes are taken and kept of all general meetings, Board meetings and resolutions without meeting.

Compare item 14 of Schedule 1 of the Act\*.

58.2 The minutes of annual general meetings must include a copy of the financial statements and accompanying audit report submitted at the meeting in accordance with clause 16.3.

See sections 94(4), 97(4) and 100(4) and item 15 of Schedule 1 of the Act\*.

58.3 The minutes of special general meetings must include a copy of any financial statements submitted at the meeting.

See item 15 of Schedule 1 of the Act\*.

58.4 Members may inspect and obtain copies of minutes in accordance with clause 60.

## **59. Retention of Records**

59.1 The Board must provide for the safe keeping of the records of the association.

59.2 The association must keep its financial records for at least 7 years after the transactions covered by the records are completed.

See section 89(2) of the Act\*.

59.3 The association must keep the financial statements submitted to the annual general meeting for at least 7 years after the annual general meeting.

See section 105(1) of the Act\*.

59.4 The association must keep the certificate referred to in clause 16.6 for at least 7 years after the certificate was signed.

See section 105(2) of the Act\*.

59.5 The association must keep all its other records for at least 7 years after the record was created.

59.6 A person who is no longer entitled to custody of records of the association must return them to the Board within 28 days.

See section 88 of the Act\*.

## **60. Access to Records**

60.1 Members may on request inspect:

- (a) the register of members,
- (b) the minutes of general meetings,
- (c) a copy of any trust deed referred to in clause 56.3(e), and
- (d) subject to clause 60.2, the other records of the association, including the minutes of Board meetings,

at any reasonable time.

See sections 53(1), 57 and 101(2) and items 13, 15 and 16 of Schedule 1 of the Act\*.

60.2 Members may not inspect the records of the association that relate to confidential personal, employment, commercial and legal matters, except as permitted by the Board.

See items 13 and 16 of Schedule 1 of the Act\*.

60.3 The association must on request make copies of the constitution and regulations\* available to members and applicants for membership without charge.

Compare section 53 of the Act\*.

60.4 The association must within 7 days of request make copies of:

- (a) the register of members (subject to clause 60.5), and
- (b) the minutes of general meetings, available to members without charge.

Compare section 53(2) and see items 13 and 15 of Schedule 1 of the Act\*.

60.5 A member may request that access to their personal information in the register of members be restricted in accordance with the Act\*, if there are special circumstances that justify doing so.

See section 59 of the Act\*.

## **61. Use of Register of Members**

61.1 Members may only use or disclose information from the register of members to contact or send material to other members if this is directly related to the management or purposes of the association.

See section 58 of the Act\*.

61.2 Non-members must not use or disclose information from the register of members to contact or send material to members unless this is:

- (a) directly related to the management or purposes of the association; and
- (b) authorised by the Board.

See section 58 of the Act\*.

## **62. Signing of Documents**

62.1 The association may sign contracts and other documents either:

- (a) by using a common seal under clause 63; or
- (b) by having the document signed by 2 Board members.

See section 38 of the Act\*.

62.2 A document may only be signed by 2 Board members if authorised by resolution of the Board.

## **63. Common Seal**

63.1 The association may have a common seal.

See section 29(2)(b) of the Act\*.

63.2 Clauses 63.3–63.7 only apply if the association has a common seal.

63.3 The name of the association must appear in legible characters on the common seal.

See section 23(1)(a) of the Act\*.

63.4 A document may only be sealed with the common seal if authorised by resolution of the Board.

63.5 The sealing must be witnessed by the signatures of at least 2 Board members nominated by the Board by regulation\* or resolution.

63.6 The Board may nominate a list of individuals or positions to be signatories for the purpose of clause 63.5.

63.7 The Board must provide for the safe keeping of the common seal.

#### **64. Registered Address**

64.1 The association must have a registered address for the service of documents on the association.

See sections 28 and 217 of the Act\*.

64.2 The registered address of the association must be the address of the principal office of the association.

64.3 The association must notify the Registrar\* of any change of registered address within 14 days.

See section 28(3) of the Act\*.

#### **65. Amendment of Constitution**

65.1 This constitution may only be amended by special resolution\*.

See section 50(1) of the Act\*.

65.2 An amendment to this constitution does not take effect until it has been approved by the Registrar\*.

See section 50(2) of the Act\*.

65.3 The Secretary must apply to the Registrar\* for approval of the amendment within 28 days after the special resolution\* was passed.

See section 50(3) of the Act\*.

#### **66. Winding Up**

66.1 The association may be wound up voluntarily by special resolution\*.

See section 125 of the Act\*.

66.2 If the association is:

(a) wound up voluntarily or otherwise; or

(b) its incorporation is cancelled;

the surplus assets of the association must not be distributed to any member.

See section 132(4) of the Act\*.

66.3 The surplus assets must be given to a body that:

(a) has similar purposes to the association; and

(b) also prohibits the distribution of any surplus, income and assets to its members to at least as great an extent as the association;

subject to clauses 66.5, 67.2(e) and 67.2(f).

66.4 If the association is wound up voluntarily, the body to which its surplus assets are to be given must be decided by special resolution\*.

66.5 The surplus assets of the association do not include any property supplied by a government department, public authority or municipal council, including the unexpended portion of a grant. On winding up, that property must be returned to the body that supplied it or its nominee.

See section 132(3) of the Act\*.

#### **67. Tax Deductibility**

67.1 In this clause:

(a) “contributions” and “fund-raising event” have the same meaning as in Division 30 of the Tax Act;

(b) “DGR” means a deductible gift recipient under Division 30 of the Tax Act;

(c) “gift funds” means:

(i) gifts and contributions to the association, and

(ii) money received by the association because of such gifts and contributions; and

(d) “the Tax Act” means the Commonwealth *Income Tax Assessment Act 1997*.

67.2 Because the association is a DGR:

(a) receipts for gifts to the association must include:

(i) the name and ABN of the association, and

(ii) the fact that the receipt is for a gift;

- (b) receipts for contributions to the association in relation to a fund-raising event must include:
  - (i) the name and ABN of the association, and
  - (ii) the other information required by section 30-228 of the Tax Act;
- (c) the association must keep records that record and explain all transactions and other acts it engages in relevant to its status as a DGR for at least 5 years;
- (d) the records must show that the association uses gift funds only for the principal purpose of the association;
- (e) on winding up of the association or revocation of its endorsement (whichever occurs earlier), any surplus gift funds must be transferred to another DGR; and
- (f) on winding up or dissolution of the association its surplus assets other than any surplus gift funds must also be given to another DGR.

## 68. Notices

- 68.1 Members must give the association their address for notices, and any change in that address.
- 68.2 The address for notices may include an email address and a fax number.
- 68.3 The association must enter any change in the address of a member in the register of members without delay.
- 68.4 Notice may be given to a member by sending it to the address last given by the member.
- 68.5 In this constitution a period of notice of a meeting expressed in days:
  - (a) does not include the day on which notice is given; but
  - (b) includes the day on which the meeting is held.
- 68.6 Notices sent by prepaid post are taken to have been given on the second day after posting that is not a Saturday, Sunday or public holiday at that address.
- 68.7 Notices sent by email or fax are taken to have been given on the first day after sending that is not a Saturday, Sunday or public holiday at that address.

68.8 In this clause, “member” includes a Board member.

## 69. Interpretation

- 69.1 In this constitution, unless the contrary intention appears:
  - (a) “absolute majority” means a majority of the votes of all Board members entitled to vote at the time, whether or not those Board members are present, and whether or not they vote;
  - (b) “the Act” means the Victorian *Associations Incorporation Reform Act 2012*;
  - (c) “the association” means the association named in clause 2.1;
  - (d) “convene” means call and arrange to hold, and includes setting the date, time and place of the meeting;
  - (e) “member” has the extended meanings given in clauses 6.4 and 19.3;
  - (f) “the Registrar” means the Registrar of Incorporated Associations under the Act\*;
  - (g) “regulations” means regulations of the association made under clause 31.1, and “regulation” has a corresponding meaning;
  - (h) “special resolution” means a resolution:
    - (i) to amend this constitution;
    - (ii) to change the name of the association;
    - (iii) to amalgamate the association with another association incorporated under the Act\*; or
    - (iv) to wind up the association;
 which may only be passed at a general meeting where:
    - (v) at least 21 days notice of the proposed resolution has been given to each member entitled to vote;
    - (vi) the notice specifies that it is intended that the resolution be proposed as a special resolution; and

- (vii) at least three-quarters of those members who vote at the meeting (whether in person, by representative or by proxy), vote in favour; and

See section 64 of the Act\*.

- (i) “writing” includes emails and documents sent electronically.

69.2 Where this constitution requires a document to be signed, in the case of an incorporated body the document must either be sealed, or signed on its behalf.

69.3 The headings form part of this constitution.

69.4 The explanatory notes inserted in a smaller font size after provisions of this constitution are for guidance only and do not form part of this constitution.

69.5 This constitution is to be interpreted in accordance with the Victorian *Interpretation of Legislation Act 1984* as if this constitution were an Act of the State of Victoria, unless the contrary intention appears.

69.6 The Board is responsible for the interpretation of the constitution and regulations\*.

69.7 The provisions of this constitution are the rules of the association for the purposes of the Act\*.

69.8 This constitution is intended to make provision for all matters required by the Act\*, with the intention that none of the model rules prescribed under the Act\* apply to the association.

See section 48(3) and Schedule 1 of the Act\*.

## **70. Transitional**

70.1 This constitution (including this clause) takes effect on the date it is approved by the Registrar\*.

See section 50(2) of the Act\*.

70.2 In this clause, “the 2013 AGM”, “the 2014 AGM” and “the 2015 AGM” mean the annual general meetings held in those years.

70.3 The following are taken to have been elected as Board members:

- (a) immediately before the 2013 AGM – Cormac McCarthy, Barbara Chancellor and Paul Grover;

- (b) immediately before the 2014 AGM – Sharon Sykes, Rachel Carlisle and Rebecca Ho; and

- (c) immediately before the 2015 AGM – Mark Chatman, Stephen Bendle and Melissa MacMaster.

70.4 All other officers and committee members of the association cease to hold office, except for the Executive Director.

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