



ACHPER Incorporated

# Constitution

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## **CONSTITUTION**

### **1. Name**

The name of the incorporated association is the Australian Council for Health, Physical Education and Recreation Incorporated (*'the association'*).

### **2. Definitions**

- 2.1. **'the Act'** means the Associations Incorporations Act 1985 (SA);
- 2.2. **'Applicant'** means an application for membership of the association;
- 2.3. **'Branch Membership'** means as provided by Clause 6;
- 2.4. **'Board'** means the management board of the association;
- 2.5. **CEO** means the Chief Executive Officer appointed by the Board from time to time;
- 2.6. **'Life Member'** means an individual member of an ACHPER Branch who has been conferred life membership of the association;
- 2.7. **'Public Officer'** means the Chief Executive Officer unless the Board appoints someone else to the position.

### **3. Objects and Purposes of the Association**

- 3.1. The objects and purposes of the association are:
  - 3.1.1. to promote active and healthy living for all Australians through education and professional practice;
  - 3.1.2. to provide programs and services to members that support continuing development of knowledge, skills and professional practice, focussing primarily on health education, physical education and recreation. Through this, the association will serve members and other stakeholders who value lifelong physical activity and health.

### **4. Powers of the Association**

- 4.1. For achieving its objects and purposes, the association has the powers conferred by the Act and has the powers of an individual.
- 4.2. Subject to the Act, the association may do all things necessary or convenient for carrying out its objects or purposes, and in particular, may:
  - 4.2.1. enter into any agreements with any government authority, commission, or other institution and to obtain from such government authority, commission or institution any grants, loans payments, rights, privileges and concessions;
  - 4.2.2. acquire, hold and dispose of real or personal property;
  - 4.2.3. open and operate accounts with financial institutions;
  - 4.2.4. invest its money in any security in which trust monies may lawfully be invested;
  - 4.2.5. raise and borrow money on the terms and in the manner it considers appropriate;
  - 4.2.6. secure the repayment of money raised or borrowed, or the payment of a debt or liability;
  - 4.2.7. make charges for services and facilities its supplies;
  - 4.2.8. appoint agents to transact business on its behalf;
  - 4.2.9. enter into any other contract it considers necessary or desirable;
  - 4.2.10. employ and retain on a full-time or part-time basis and on such terms as to pay and conditions of employment as the association shall agree, or on a voluntary basis, any person whose particular skills, qualifications, or knowledge may be of assistance in the attainment of the purpose of the association;
  - 4.2.11. do other things necessary or desirable to be done in carrying out its affairs.

## **Membership**

### **5. Categories of Membership**

- 5.1. The membership of the association consists of the following classes of members—
  - 5.1.1. The **branches**, which, subject to this constitution, will be represented by their delegates who have the right to attend, debate and vote at general meetings for and on behalf of their branch and its members;
  - 5.1.2. **Life members** who have been conferred Life Membership based on criteria set by the association from time to time and who are entitled to use the post nominal LMACHPER who, subject to this constitution, may attend and debate but not vote at general meetings;
- 5.2. The maximum number of members is limited to eight being one from each state and territory.

### **6. Eligibility**

- 6.1. One incorporated association from each State and Territory may be considered for branch membership.
- 6.2. To be eligible for **branch membership**, the incorporated association must:
  - 6.2.1. Agree to be bound by this Constitution and the policies determined by the Board from time to time;
  - 6.2.2. Maintain an effective governing structure and provide appropriate services to the individual members allocated to it by the association;
  - 6.2.3. Ensure at all times its constitution, purpose and policies are consistent with the purpose and policies of the association and this Constitution;
  - 6.2.4. Meet regularly and purpose its purpose to the satisfaction of the Board;
  - 6.2.5. Maintain an effective liaison with the Board;
  - 6.2.6. Participate in national initiatives as required by the Board to the satisfaction of the Board;
  - 6.2.7. Remain incorporated in its particular state or territory; and
  - 6.2.8. Elect or appoint delegates to represent it at general meetings, the National Representative Forum and other meetings of the association.

### **7. Application for Membership**

- 7.1. To apply to become a branch member of the association, the incorporated association must:
  - 7.1.1. submit a written application for membership to the Board:
    - 7.1.1.1. in a form approved by the Board; and
    - 7.1.1.2. signed by an authorised person of the incorporated association; and
    - 7.1.1.3. lodged with the CEO of the association.

### **8. Consideration of Application**

- 8.1. As soon as practicable after receiving an application for membership, the CEO must refer the application to the Board which is to determine whether to approve or to reject the application.
- 8.2. As soon as practicable after an application for membership is received, the Board must decide by resolution whether to accept or reject the application, and to determine the class of membership for the Applicant.
- 8.3. Applications will be considered and decided in the order they are received by the association.
- 8.4. When considering a membership application, the Board may seek clarification of any matter or further information in support of the application, and may delay its decision to allow for that material to be provided and proceed to consider and decide other applications.
- 8.5. The Board must not approve a membership application unless the Applicant:
  - 8.5.1. meets all the eligibility requirements under clause 6; and

8.5.2.applies under clause 7.

8.6. The Board may refuse to accept a membership application even if the Applicant has applied in writing and complies with all the eligibility requirements under clause 7.

8.7. The Board must notify the applicant in writing of its decision as soon as practicable after the decision is made.

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

## **9. Becoming a Member**

9.1. An Applicant becomes a member if:

9.1.1.the Applicant is eligible for membership under clause 6;

9.1.2.the Applicant applies in writing to the Association under clause 7; and

9.2. the Board approves the Applicant's application for membership. The Applicant immediately becomes a member and is entitled to exercise all the rights and privileges of membership, including the right to vote (if applicable), and must comply with all of the obligations of membership under this Constitution, when clause 8 has been fulfilled.

## **10. Membership payments**

10.1. Branch members will pay an agreed percentage of each branch member annual payment to the association.

10.2. The payment of monies to the association will be in accordance with the approved board policy.

10.3. The percentage to be paid by branches will be confirmed at each AGM of the association.

10.4. Life members are not required to pay membership fees.

## **11. Rights and obligations of members**

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

11.2. A member of the association who is entitled to vote has the right—

11.2.1. to receive notice of general meetings and of proposed special resolutions in the manner and time prescribed by this Constitution; and

11.2.2. to submit items of business for consideration at a general meeting; and

11.2.3. to attend and be heard at general meetings; and

11.2.4. to vote at a general meeting; and

11.2.5. to have access to the minutes of general meetings and other documents of the association as provided under clause 60; and

11.2.6. to inspect the register of members.

11.3. A member is entitled to vote if—

11.3.1. the member is a branch member; and

11.3.2. more than 10 business days have passed since the incorporated association became a member of the association; and

11.3.3. the member's membership rights are not suspended for any reason.

11.4. The liability of a member of the association to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association is limited to the amount, if any, unpaid by the member in respect of membership of the association as required by clause 10.

11.5. A member is only liable for their outstanding membership monies payable under clause 10, if any.

## **12. Cessation of Membership**

- 12.1. A incorporated association ceases to be a member of the association if the association is expelled from the association:
- 12.2. A member of the association may resign from membership of the association by first giving to the CEO written notice of at least one month (or such other period as the Board may determine) of the member's intention to resign and, on the expiration of the period of notice, the member ceases to be a member.
- 12.3. Any member who resigns from the association remains liable to pay to the association any outstanding monies which may be recovered as a debt due to the association by the member.
- 12.4. Where a member ceases to hold membership, the CEO must make an appropriate entry in the register of members recording the date on which the member ceased to be a member and the reason why the person ceases to be a member.

## **13. Suspension of branch members**

- 13.1. When a branch is unable to maintain a committee structure or provide appropriate services to members, the Board may suspend formal operations of the branch and:
  - 13.1.1. approach the most appropriate geographical branch to provide membership services for the members of the suspended branch; and/or
  - 13.1.2. continue working with members of that branch to reinstate formal operations of that branch.
- 13.2. If 13.1.1 applies, an appropriate financial arrangement will be determined for the branch which provides such services.
- 13.3. The Board may resolve by special resolution that a branch has contravened the intention and purpose of this constitution, policies or resolutions of the association. In making such a resolution, the association may do any or all of the following:
  - 13.3.1. suspend the voting rights of the branch at meetings of the association.
  - 13.3.2. suspend services to members of that branch.
  - 13.3.3. commence legal proceedings to enforce compliance with the constitution, policies or resolutions of the association, provided that at least two months' notice in writing is given to that branch of the intention of the Board to commence proceedings.
  - 13.3.4. recover financial compensation from the branch for costs directly or indirectly attributed to the contravention. Any financial compensation will be a charge on the assets of the branch.
  - 13.3.5. In the event of the branch being dissolved or wound up, take steps to convene in that state or territory a special general meeting of members of the branch being dissolved or wound up and other interested parties for the purpose of forming a new branch.
  - 13.3.6. Take action to prevent a dissolved or wound up branch using the name 'ACHPER' or any variation of the name, and from representing itself as being in any way part of or associated with the association.

## **14 Disciplinary action against a member**

- 14.1 The association may take disciplinary action against a member in accordance with this clause if it is determined that the member—
  - 14.1.1 has failed to comply with this Constitution; or
  - 14.1.2 refuses to support the purposes of the association; or
  - 14.1.3 has engaged in conduct prejudicial to the association.
- 14.2 If the Board is satisfied that there are sufficient grounds for taking disciplinary action against a member, the Board must appoint a disciplinary subcommittee to hear the matter and determine what action, if any, to take against the member.

14.3 The members of the disciplinary subcommittee—

14.3.1 may be members of the association or anyone else; but

14.3.2 must not be biased against, or in favour of, the member concerned.

14.4 Before disciplinary action is taken against a member, the CEO must give written notice to the member—

14.4.1 stating that the association proposes to take disciplinary action against the member; and

14.4.2 stating the grounds for the proposed disciplinary action; and

14.4.3 specifying the date, place and time of the meeting at which the disciplinary subcommittee intends to consider the disciplinary action (the disciplinary meeting); and

14.4.4 advising the member that they may do one or both of the following—

14.4.4.1 attend the disciplinary meeting and address the disciplinary subcommittee at that meeting;

14.4.4.2 give a written statement to the disciplinary subcommittee at any time before the disciplinary meeting; and

14.4.4.3 setting out the member's appeal rights under clause 0 15.

14.5 The notice must be given no earlier than 28 days, and no later than 14 days, before the disciplinary meeting is held.

14.6 At the disciplinary meeting, the disciplinary subcommittee must—

14.6.1 give the member an opportunity to be heard; and

14.6.2 consider any written statement submitted by the member.

14.7 After complying with clause 14.60, the disciplinary subcommittee may—

14.7.1 take no further action against the member; or

14.7.2 subject to clause 14.90-

14.7.2.1 reprimand the member; or

14.7.2.2 suspend the membership rights of the member for a specified period; or

14.7.2.3 expel the member from the association.

14.8 The disciplinary subcommittee may not fine the member.

14.9 The suspension of membership rights or the expulsion of a member by the disciplinary subcommittee under this rule takes effect immediately after the vote is passed.

14.10 The CEO must inform the member in writing of the decision of the Board and the reasons for the decision, within 7 days of the disciplinary meeting referred to in clause 14.60.

14.11 If a member's membership is suspended under clause 14.70, the CEO must record in the Register:

14.11.1 the name of the member that has been suspended from membership;

14.11.2 the date on which the suspension takes effect; and

14.11.3 the length of the suspension as determined by the Board under 0.

14.12 A member that has been suspended under clause 14.70 cannot exercise any rights or privileges of membership, including voting rights, during the period they are suspended from membership. Upon the expiry of the period of a member's suspension, the CEO must record in the Register that the member is no longer suspended.

## **15 Appeals against suspension or expulsion**

15.1 A branch whose membership rights have been suspended or who has been expelled from the association under clause 14.70 may give notice to the effect that to appeal against the suspension or expulsion.



15.2 The notice must be in writing and given—

15.2.1 to the disciplinary subcommittee immediately after the vote to suspend or expel the person is taken; or

15.2.2 to the CEO not later than 48 hours after the vote.

15.3 If a person has given notice under clause 15.10, a disciplinary appeal meeting must be convened by the Board as soon as practicable, but in any event not later than 21 days, after the notice is received.

15.4 Notice of the disciplinary appeal meeting must be given to each member of the association who is entitled to vote as soon as practicable and must—

15.4.1 specify the date, time and place of the meeting; and

15.4.2 state—

15.4.2.1 the name of the member against whom the disciplinary action has been taken; and

15.4.2.2 the grounds for taking that action; and

15.4.2.3 that at the disciplinary appeal meeting the members present must vote on whether the decision to suspend or expel the person should be upheld or revoked.

15.5 At a disciplinary appeal meeting—

15.5.1 no business other than the question of the appeal may be conducted; and

15.5.2 the Board must state the grounds for suspending or expelling the member and the reasons for taking that action; and

15.5.3 the member whose membership has been suspended or who has been expelled must be given an opportunity to be heard.

15.6 After complying with clause 15.50, the members present and entitled to vote at the meeting must vote by secret ballot on the question of whether the decision to suspend or expel the person should be upheld or revoked.

15.7 A member may not vote by proxy at the meeting.

15.8 The decision is upheld if not less than three quarters of the members voting at the meeting vote in favour of the decision.

15.9 If the Board's decision to suspend or expel a member is revoked under this Constitution, any act performed by the Board or members in General Meeting during the period that the member was suspended or expelled from membership under clause 0, is deemed to be valid, notwithstanding the member's inability to exercise their rights or privileges of membership, including voting rights, during that period.

## **16 Register of Members**

16.1 The CEO or a person authorised by the Board from time to time must maintain a register of members and make sure that the Register is up to date.

16.2 The Register must contain:

16.2.1 the full name of each member;

16.2.2 a contact postal, residential or email address of each member;

16.2.3 the category of membership held by the member; and

16.2.4 the date on which the person became a member.

16.3 Any change in membership of the association must be recorded in the Register within 28 days after the change occurs.

16.4 The Register must be kept and maintained at the association's registered office, or at such other place as the Board decides.

## **17 Board**

17.1 The business of the association must be managed by or under the direction of a Management Board ('the Board').

17.2 The Board may exercise all the powers of the association except those matters that the Act or this Constitution requires the association to determine through a General Meeting of members.

17.3 The Board may appoint and remove staff, including a CEO.

17.4 The Board may establish one or more subcommittees consisting of the members of the association and non-members the Board considers appropriate.

17.5 The Board shall have authority to interpret the meaning of this Constitution and any other matter relating to the affairs of the association on which this Constitution is silent.

## **18 Composition of the Board**

18.1 The Board must comprise the following elected and appointed members:

18.1.1 one elected National President;

18.1.2 one elected National Vice President;

18.1.3 three elected Board members;

18.1.4 a maximum three appointed members, who;

18.1.4.1 have specific skills in commerce, finance, law or business or such other skills that complement the Board's composition;

18.1.4.2 are not required to be a member of the association; and

18.1.4.3 must not be an office bearer, employee, contractor or hold office for profit within the association or a branch.

18.1.5 the CEO in an ex-officio capacity.

18.2 A Board member must be:

18.2.1 a natural person;

18.2.2 over 18 years in age; and

18.2.3 a member.

18.3 The office-bearers of the association are as follows:

18.3.1 One elected National President;

18.3.2 one elected Vice-President;

18.3.3 the Public Officer.

18.4 Each member of the Board is, subject to this Constitution, to hold office until the conclusion of elections at the Annual General Meeting following three years after the date of the member's election, but is eligible for re-election subject to clause 20.2 0.

18.5 In each three-year cycle:

18.5.1 The President and one elected Board member will be elected in year one;

18.5.2 one elected Board member, the Vice-President in year two; and

18.5.3 one elected Board member in year three.

18.6 Appointed Board members are appointed by the Board for a term of two years. An appointed Board member may be appointed for a maximum of three consecutive terms.

18.7 A member of the association may be appointed to a casual vacancy on the Board under Clause 23.

## **19 Election of office-bearers and Board members**

19.1 The CEO must send a notice calling for nominations for the election of office bearers and Board members and specifying the date for the close of nominations to all members at least 45 days before the date for the close of nominations.

19.2 Nominations of candidates for election as office-bearers of the association or as Board members:

19.2.1 must be made in writing, signed by 2 members of the association and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination), and

19.2.2 must be delivered to the CEO of the association at least 14 days before the date fixed for the holding of the Annual General Meeting at which the election is to take place.

19.3 Notice of all persons seeking election to the Board shall be given to all members of the association with the notice calling the meeting at which the election is to take place.

## **20 Eligibility for nomination**

20.1 A person nominated as a candidate for election as an office-bearer or as an elected Board member of the association must be a member of the association.

20.2 A person is not eligible for election to an office-bearer position if they have served two consecutive terms in that office-bearer position in the immediate prior term.

20.3 Nominees may not continue as an office bearer, employee, contractor or hold any office for profit within the association or a branch if elected.

20.4 A person who is eligible for election or re-election under this clause may:

20.4.1 propose or second himself or herself for election or re-election; and

20.4.2 vote for himself or herself.

20.5 A person may be a candidate only if the person—

20.5.1 is an adult; and

20.5.2 is not ineligible to be elected as a member under the Act.

20.6 No person shall be entitled to hold a position on the Board if the person has been convicted of, or imprisoned in the previous five years for:

20.6.1 an indictable offence in relation to the promotion, formation or management of a body corporate;

20.6.2 an offence involving fraud or dishonesty punishable by imprisonment for a period of not less than three months;

20.7 No person shall be entitled to hold a position on the Board if the person is a bankrupt or a person whose affairs are under insolvency laws.

## **21 How elections are conducted**

21.1 At the Annual General Meeting, separate elections must be held for each of the following positions—

21.1.1 President;

21.1.2 Vice-President;

21.1.3 Elected Board members.

21.2 If, at the start of the meeting, there are not enough candidates nominated, nominations may be taken from the floor of the meeting. Nominations must only be taken for persons who are members of the association.

21.3 If insufficient nominations are received to fill all vacancies on the Board, the candidates nominated are deemed elected.

21.4 Any vacant positions remaining on the Board are taken to be casual vacancies.

21.5 If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are deemed to be elected.

21.6 If the number of nominations received exceeds the number of vacancies to be filled, a secret ballot is to be held.

## **22 Ballot**

22.1 The ballot will be secret.

22.2 The ballot for the election of office-bearers and Board members is to be conducted at the Annual General Meeting by the preferential method, the procedure for which is detailed in the National Elections Policy in such usual and proper manner as the Board may direct.

22.3 The members chosen by ballot must be declared by the President to be duly elected as members of the Board. The results of any election of Board members take effect from 11.30pm Central Australian Time on the Friday following such election, provided that there is at least one clear day between this date and the election. Should there not be one clear day then the results of the election will take effect the following Friday at the same time.

22.4 Each member of the association present and eligible to vote at the Annual General Meeting may vote for 1 candidate for each vacant position on the Board.

22.5 Upon taking office Board members will cease to be regarded as representing a branch on the Board.

## **23 Casual Vacancies**

23.1 In the event of a casual vacancy occurring in the membership of the Board, the Board may appoint a member of the association to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the conclusion of the Annual General Meeting next following the date of the appointment.

23.2 However, if the office of Public Officer becomes vacant, a person must be appointed under the Act to fill the vacancy.

23.3 The continuing members of the Board may act despite a casual vacancy on the Board.

23.4 However, if the number of Board members is less than the number fixed under clause 37 0 as a quorum of the Board, the continuing members may act only to—

23.4.1 increase the number of Board members to the number required for a quorum; or

23.4.2 call a General Meeting of the association.

## **24 What causes a casual vacancy**

24.1 A casual vacancy in the office of a member of the Board occurs if the member:

24.1.1 dies, or

24.1.2 ceases to be a member of the association; or

24.1.3 becomes an insolvent under administration within the meaning of the Corporations Act 2001 of the Commonwealth, or

24.1.4 resigns office by notice in writing given to the CEO; or

24.1.5 becomes permanently incapacitated by mental or physical ill-health, or

24.1.6 is absent without the consent of the Board from 3 consecutive meetings of the Board, or

24.1.7 is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months, or

24.1.8 is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the Corporations Act 2001 of the Commonwealth.

## **25 Role of President, Vice-President and Board Members**

25.1 Subject to clauses 25.2 0 and 25.3 0, the President must preside at all General Meetings and Board meetings.

25.2 If the President is absent from a meeting, the Vice-President must preside at the meeting.

25.3 If the President and the Vice-President are both absent, the presiding member for that meeting must be:

25.3.1 a member elected by the other members present if it is a General Meeting; or

25.3.2 a Board member elected by the other Board members present if it is a Board meeting.

25.4 The President:

25.4.1 may consult with the CEO regarding the business to be conducted at each Board meeting and each General Meeting;

25.4.2 may convene special meetings of the Board under clause 38;

25.4.3 must ensure that the minutes of a General Meeting or Board meeting are reviewed and signed as correct under clause 43.

## **26 Remuneration of Board members**

26.1 The Board members are not entitled to remuneration.

26.2 The association may reimburse Board members for reasonable travelling and other expenses incurred on association business.

## **27 Chief Executive Officer (CEO)**

27.1 Subject to the Act, this constitution and any directive of the Board, the CEO has power to perform all such things as are necessary or desirable for the proper management and administration of the association.

27.2 The CEO will be appointed by the Board for a term and on the conditions as the Board thinks fit.

## **28 Public Officer**

28.1 The Public Officer must perform any duty or function required under the Act to be performed by the Public Officer of an incorporated association.

28.2 The Public Officer must keep a current copy of the Constitution of the association.

28.3 The Public Officer of the association must, as soon as practicable after being appointed as the Public Officer, lodge notice with the association of his or her address.

## **29 General responsibilities of Board members**

29.1 As soon as practicable after being elected to the Board, each Board member must become familiar with the Act and regulations made under the Act.

29.2 The Board is collectively responsible for ensuring the association complies with the Act and regulations made under the Act.

29.3 Board members must exercise their powers and discharge their duties—

29.3.1 in good faith in the best interests of the association;

29.3.2 with reasonable care and diligence; and

29.3.3 for a proper purpose.

29.4 Board members and former Board members must not make improper use of—

29.4.1 their position; or

29.4.2 information acquired by virtue of holding their position—

29.4.3 so as to gain an advantage for themselves or any other person or to cause detriment to the association.

29.5 No Board member shall make any public statement or comment or cause to be published any words or article concerning the conduct of the association unless the person is authorised by the Board to do so and such authority is recorded in the minutes of the Board meeting.

### **30 Conflict of Interest**

30.1 A Board member who has a direct or indirect pecuniary interest in a contract, or proposed contract, with the association must disclose the nature and extent of the interest to the Board in accordance with any requirements of the Act.

30.2 The CEO must record the disclosure in the minutes of the meeting.

30.3 The President must ensure a Board member who has a direct or indirect pecuniary interest in a contract, or proposed contract, complies with the Act.

30.4 The member—

30.4.1 must not be present while the matter is being considered at the meeting; and

30.4.2 must not vote on the matter.

### **31 Leave of absence**

31.1 The Board may grant a Board member leave of absence from Board meetings for a period not exceeding 3 months.

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

### **32 Delegation**

32.1 The Board may delegate to a subcommittee or staff any of its powers and functions other than—

32.1.1 this power of delegation; or

32.1.2 a duty imposed on the Board by the Act or any other law.

32.2 The delegation must be in writing and may be subject to the conditions and limitations the Board considers appropriate.

32.3 The Board may, in writing, revoke wholly or in part the delegation.

32.4 Despite any delegation under this rule, the Board may continue to exercise all its functions, including any function that has been delegated to a subcommittee and remains responsible for the exercise of those functions at all times.

### **33 Board meetings**

33.1 Subject to this clause, the Board may meet and conduct its proceedings as it considers appropriate.

33.2 The President, or at least half the Board members, may at any time convene a special meeting of the Board.

33.3 The Board shall meet together for the dispatch of business at least six times per year.

### **34 Calling Board meetings**

- 34.1 The Board must decide how a meeting is to be called.
- 34.2 Notice of a meeting is to be given in the way decided by the Board.

### **35 Use of technology**

- 35.1 A Board member who is not physically present at a Board meeting may participate in the meeting by the use of technology that allows that Board member and the Board members present at the meeting to clearly and simultaneously communicate with each other.
- 35.2 For the purposes of this clause, a Board member participating in a Board meeting as permitted under clause 35.1 is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

### **36 Procedure and order of business**

- 36.1 The President is to preside as chairperson at a Board meeting.
- 36.2 If there is no President or if the President is not present within 10 minutes after the time fixed for a Board meeting, the Vice-President will be the chairperson. If there is no Vice-President or the Vice-President is not present within 10 minutes after the time fixed for a Board meeting, the Board members may choose 1 of their number to preside as chairperson at the meeting.
- 36.3 The procedure to be followed at a meeting of a Board must be determined from time to time by the Board.
- 36.4 The order of business may be determined by the members present at the meeting.

### **37 Quorum**

- 37.1 For a Board meeting, one-half of the Board members plus one constitutes a quorum unless otherwise provided in the Act.
- 37.2 No business is to be transacted by the Board unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- 37.3 If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.

### **38 Special or urgent meetings**

- 38.1 Oral or written notice of a meeting of the Board must be given by the CEO to each member of the Board at least 48 hours (or such other period as may be unanimously agreed on by the members of the Board) before the time appointed for the holding of the meeting.
- 38.2 Special Board meetings may be convened by the President or by any 4 members of the Board.
- 38.3 The notice must include the general nature of the business to be conducted.
- 38.4 The only business that may be conducted at the meeting is the business for which the meeting is convened.

### **39 Voting and decisions**

- 39.1 Questions arising at a meeting of the Board or of any subcommittee appointed by the Board are to be determined by a majority of the votes of members of the Board or subcommittee present at the meeting.
- 39.2 Each member present at a meeting of the Board or of any subcommittee appointed by the Board (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.

39.3 Clause 39.2 0 does not apply to any motion or question which is required by this Constitution to be passed by an absolute majority of the Board.

39.4 Voting by proxy is not permitted.

39.5 Decisions may be made by general agreement or a show of hands.

39.6 A poll by secret ballot may be used if the Board prefers to determine a matter in this way and the person presiding over the Board Meeting is to oversee the ballot.

#### **40 Acts not affected by defects or disqualifications**

40.1 An act performed by the Board, a subcommittee or a person acting as a member of the Board is taken to have been validly performed.

40.2 Clause 40.1 applies even if the act was performed when—

40.2.1 there was a defect in the appointment of a member of the Board, subcommittee or person acting as a member of the Board; or

40.2.2 a Board member, subcommittee member or person acting as a member of the Board was disqualified from being a member.

#### **41 Resolutions of Board without meeting**

41.1 A written resolution signed by each member of the Board is as valid and effectual as if it had been passed at a Board meeting that was properly called and held.

41.2 A resolution mentioned in clause 44.1 0 may consist of several documents in like form, each signed by 1 or more members of the Board.

#### **42 Subcommittees**

42.1 The Board may appoint a subcommittee consisting of members of the association and non-members considered appropriate by the Board to help with the conduct of the association's operations.

42.2 A subcommittee may elect a chairperson of its meetings.

42.3 If a chairperson is not elected, or if the chairperson is not present within 10 minutes after the time fixed for a meeting, the members present may choose 1 of their number to be chairperson of the meeting.

42.4 A subcommittee may meet and adjourn as it considers appropriate.

42.5 Subject to this Constitution, the subcommittee members present at the subcommittee meeting are to determine the procedure and order of business to be followed at the subcommittee meeting.

42.6 A question arising at a subcommittee meeting is to be decided by a majority vote of the members present at the meeting and, if the votes are equal, the question is decided in the negative.

42.7 A quorum for the transaction of the business of a meeting of the subcommittee is 3 appointed members entitled to vote.

#### **43 Minutes of Board meetings**

43.1 The CEO must ensure full and accurate minutes of all questions, matters, resolutions and other proceedings of each Board meeting are entered in a minute book.

43.2 To ensure the accuracy of the minutes, the minutes of each Board meeting must be signed by the chairperson of the meeting, or the chairperson of the next Board meeting, verifying their accuracy.

43.3 The minutes must record the following—

43.3.1 the names of the members in attendance at the meeting;

43.3.2 the business considered at the meeting;

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



43.3.4 any interest disclosed under clause 30.

#### **44 Record of Office Holders**

44.1 The CEO or a person authorised by the Board from time to time must maintain a record of office holders. The record of office holders must include:

44.1.1 the full name of each office holder;

44.1.2 the office held and the dates of appointment and (if applicable) cessation of the appointment; and

44.1.3 a current contact postal, residential or email address of each office holder.

44.2 The record of office holders must be kept and maintained at the CEO's place of residence, or at such other place as the Board decides.

#### **45 Inspecting the Record of Office Holders**

45.1 Any member is able to inspect the record of office holders, at such time and place as is mutually convenient to the association and the member.

45.2 The member may make a copy of details from the record of office holders but has no right to remove the record for that purpose.

#### **46 AGM/General Meetings etc. – National Representative Forum**

46.1 The National Representative Forum is a general meeting comprising the Board and one representative from each branch. It is to be convened at least once per year as an Annual General Meeting to:

46.1.1 receive reports;

46.1.2 consider strategic directions;

46.1.3 provide strategic advice;

46.1.4 elect National Board members;

46.1.5 appoint auditors;

46.1.6 vote on amendments to the Constitution; and

46.1.7 consider and recommend membership fee and subscription changes.

46.2 Forum papers will be sent to the Board and branches 2 weeks prior to the meeting.

46.3 The President or his/her nominee will chair the meeting and will have a casting vote but no deliberative vote.

46.4 All forum members have the right to vote.

46.5 A quorum for the National Representative Forum shall be one half of the number of Board members and representatives of one half of the branches.

46.6 In the event that a quorum as required by this constitution is not present at a National Representative Forum the meeting will be reconvened within four weeks and if at the reconvened meeting a quorum of members is not present the business of the meeting shall be conducted by those present and decisions made by the vote of a simple majority of those members present.

46.7 The National Representative Forum held closest to 30th June each year is the Annual General Meeting of the association.

#### **47 Special general meetings**

47.1 A special general meeting may be called by:

47.1.1 an ordinary resolution of the Board; or

47.1.2 a request to the President for such, signed by at least two thirds of the branches.

47.2 A request under clauses 47.1.1 or 47.1.2 shall include details of the subjects requested to be covered by the meeting.

47.3 The Board is to set a date for the special general meeting. This date is to be within eight weeks of receipt of the request for the special general meeting.

47.4 The Board is to notify all members of the association who have the right to attend general meetings of the date, time and location of the meeting and the agenda for that meeting. This notification is to be sent no later than four weeks before the date of the meeting.

47.5 The President or his/her nominee will chair the meeting and will have a casting vote but no deliberative vote.

47.6 A quorum for the special general meeting shall be one half of the number of Board members and representatives of one half of the branches.

47.7 In the event that a quorum as required by this constitution is not present at an special general meeting the meeting will be reconvened within four weeks and if at the reconvened meeting a quorum of members is not present the business of the meeting shall be conducted by the those present and decisions made by the vote of a simple majority of those members present.

#### **48 Use of Technology for National Representative Forum meetings**

48.1 For any meeting of the National Representative Forum, the Board will notify all members who have the right to attend whether physical attendance is required, or whether attendance may occur electronically.

48.2 Where attendance may occur electronically, the following must be observed:

48.2.1 All participants must be able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication.

48.2.2 Notice of the meeting must be given to all of the participants in accordance with the usual procedures and such notice must state that participants are not required to be physically present.

48.2.3 If at any stage of the meeting a quorum no longer exists because of the departure of participants or an interruption to effective communication then the meeting is to be suspended until a quorum is reached. If such is not achieved within 15 minutes from the suspension then the meeting will be deemed to have terminated as of the time that the quorum was lost.

48.2.4 Where a meeting is held by telephone, video conference or by electronic means there will be a record of:

48.2.4.1 who convened the meeting;

48.2.4.2 who participated in the meeting; and

48.2.4.3 decisions reached.

#### **49 Postal or electronic ballots**

49.1 The association may hold a postal or electronic ballot to determine any issue or proposal (other than an appeal under clause 150).

#### **50 Special Resolutions**

50.1 A special resolution of the association is required to:

50.1.1 amend the name of the association;

50.1.2 amend the Constitution, under clause 72;

50.1.3 affiliate the association with another body;

50.1.4 transfer the incorporation of the association;

50.1.5 amalgamate the association with one or more other incorporated associations;

- 50.1.6 voluntarily wind up the association;
- 50.1.7 cancel incorporation; or
- 50.1.8 request that a statutory manager be appointed.

## **51 Proxies**

- 51.1 No member may hold more than five proxies.
- 51.2 An instrument appointing a proxy must be in writing and be in the form in Schedule 1 or similar form.
- 51.3 The instrument appointing a proxy must—
  - 51.3.1 if the appointor is an individual—be signed by the appointor or the appointor's attorney properly authorised in writing; or
  - 51.3.2 if the appointor is a corporation—
    - 51.3.2.1 be under seal; or
    - 51.3.2.2 be signed by a properly authorised officer or attorney of the corporation.
- 51.4 A proxy may be a member of the association or another person.
- 51.5 The instrument appointing a proxy is taken to confer authority to demand or join in demanding a secret ballot.
- 51.6 Each instrument appointing a proxy must be given to the CEO before the start of the meeting or adjourned meeting at which the person named in the instrument proposes to vote.
- 51.7 Unless otherwise instructed by the appointor, the proxy may vote as the proxy considers appropriate.
- 51.8 If a member wants a proxy to vote for or against a resolution, the instrument appointing the proxy must be in the form in Schedule 1 or similar form.
- 51.9 Notice of a general meeting given to a member must—
  - 51.9.1 state that the member may appoint another member as a proxy for the meeting; and
  - 51.9.2 include a copy of Schedule 1.
- 51.10 A form appointing a proxy must be given to the chairperson of the meeting before or at the commencement of the meeting.
- 51.11 A form appointing a proxy sent by post or electronically is of no effect unless it is received by the association no later than 24 hours before the commencement of the meeting.

## **52 Minutes of general meetings**

- 52.1 The Board must ensure that minutes are taken and kept of each General Meeting.
- 52.2 The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- 52.3 In addition, the minutes of each Annual General Meeting must include—
  - 52.3.1 the names of the members attending the meeting; and
  - 52.3.2 proxy forms given to the CEO under clause 51.6 0; and
  - 52.3.3 the financial statements submitted to the members in accordance with clause 58; and
  - 52.3.4 the certificate signed by two Board members certifying that the financial statements give a true and fair view of the financial position and performance of the association; and
  - 52.3.5 any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.
- 52.4 The minutes are to be taken and then to be entered within 30 days after the holding of each meeting, into a minute book kept for that purpose.

52.5 The chairperson must ensure that the minutes of a General Meeting or Board Meeting are reviewed and signed as correct by:

52.5.1 the chairperson of the General Meeting or Board Meeting to which those minutes relate; or

52.5.2 the chairperson of the next succeeding General Meeting or Board Meeting.

52.6 When minutes have been entered and signed as correct under this clause, they are, until the contrary is proved, evidence that:

52.6.1 the General Meeting or Board Meeting to which they relate was duly convened and held;

52.6.2 all proceedings recorded as having taken place at the General Meeting or Board Meeting did in fact take place at the meeting; and

52.6.3 all appointments or elections purporting to have been made at the meeting have been validly made.

52.7 The minutes of General Meetings may be inspected by a member under clause 60 0.

52.8 If asked by a member of the association, the CEO must, within 28 days after the request is made—

52.8.1 make the minute book for a particular general meeting available for inspection by the member at a mutually agreed time and place; and

52.8.2 give the member copies of the minutes of the meeting.

52.9 The association may require the member to pay the reasonable costs of providing copies of the minutes.

## **Financial Matters**

### **53 Insurance**

53.1 The association may effect and maintain insurance.

### **54 Financial Year**

54.1 The first financial year of the association shall be the period ending on the next 31 December following incorporation, and thereafter a period of 12 months commencing on 1 January and ending on 31 December of each year.

### **55 Source of Funds**

55.1 The funds of the association are to be derived from annual subscriptions of members, donations and, subject to any resolution passed by the association in General Meeting, such other sources as the Board determines.

55.2 All money received by the association must be deposited as soon as practicable and without deduction to the credit of the association's bank or other authorised deposit-taking institution account.

55.3 The association must, as soon as practicable after receiving any money, issue an appropriate receipt.

### **56 Funds and accounts**

56.1 The association must open an account with a financial institution from which all expenditure of the association is made and into which all of the association's revenue is deposited.

56.2 Subject to any resolution passed by the association in General Meeting, the funds of the association are to be used in pursuance of the objects of the association in such manner as the Board determines.

56.3 Subject to any restrictions imposed by the association at a General Meeting, the Board may approve expenditure on behalf of the association within the limits of the budget.

56.4 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by 2 Board members.

56.5 All funds of the association must be deposited into the financial account of the association no later than 5 working days after receipt or as soon as practicable after that day.

56.6 With the approval of the Board, the CEO may maintain a cash float provided that all money paid from or paid into the float is accurately recorded at the time of the transaction.

56.7 The Board may authorise the CEO to expend funds on behalf of the association (including by electronic funds transfer) up to a specified limit without requiring approval from the Board for each item on which the funds are expended.

56.8 The Board may:

56.8.1 receive from an authorised deposit-taking institution a cheque drawn by the association on any of the association's accounts with the authorised deposit-taking institution; and

56.8.2 release or indemnify the authorised deposit-taking institution from or against any claim, or action or other proceeding, arising directly or indirectly out of the drawing of that cheque.

## **57 Financial Records**

57.1 The association shall keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the association in accordance with the Act.

57.2 The association must keep financial records that—

57.2.1 correctly record and explain its transactions, financial position and performance; and

57.2.2 enable financial statements to be prepared as required by the Act.

57.3 The association must retain the financial records for 7 years after the transactions covered by the records are completed.

## **58 Financial Reporting**

58.1 For each financial year, the Board must ensure that the requirements under the Act relating to the financial statements of the association are met.

58.2 Each financial year the Board will prepare:

58.2.1 an Annual Report; and

58.2.2 an audited financial statement.

58.3 The Annual Report and financial statement will be made available to the Board within four months of the end of the financial year or at a time that the Board directs.

58.4 The Annual Report and financial statement will be circulated to the branches within 14 days of receipt by the Board.

58.5 The Annual Report will be considered at the Annual General Meeting.

## **59 Custody of books etc.**

59.1 Except as otherwise provided by this Constitution, the CEO must keep in his or her custody or under his or her control all records, books and other documents relating to the association.

## **60 Inspection of books etc.**

60.1 The following documents must be open to inspection, free of charge, by a member of the association at any reasonable hour:

60.1.1 records, books and other financial documents of the association,

60.1.2 this Constitution,

60.1.3 minutes of all Board meetings and General Meetings of the association.

## **61 Auditor**

61.1 At each Annual General Meeting, the members of the association present at the meeting are to appoint a person as the auditor of the association.

61.2 If an auditor is not appointed at an Annual General Meeting under clause 61.1 0, the Board is to appoint a person as the auditor of the association as soon as practicable after that Annual General Meeting.

61.3 The auditor is to hold office until the next Annual General Meeting and is eligible for re-appointment.

61.4 The auditor may only be removed from office by special resolution.

61.5 If a casual vacancy occurs in the office of auditor, the Board is to appoint a person to fill the vacancy until the next Annual General Meeting.

## **62 Audit of accounts**

62.1 The auditor is to audit the financial affairs of the association at least once in each financial year of the association.

62.2 The auditor, after auditing the financial affairs of the association for a particular financial year of the association, is to:

62.2.1 certify as to the correctness of the accounts of the association; and

62.2.2 at the next Annual General Meeting, provide a written report to the members of the association present at that meeting.

62.3 In the report and in certifying to the accounts, the auditor is to:

62.3.1 specify the information, if any, that he or she has required under clause 62.5 0 and obtained; and

62.3.2 state whether, in his or her opinion, the accounts exhibit a true and correct view of the financial position of the association according to the information at his or her disposal; and

62.3.3 state whether the Constitution relating to the administration of the funds of the association have been observed.

62.4 The CEO of the association is to deliver to the auditor a list of all the accounting records, books and accounts of the association.

62.5 The auditor may:

62.5.1 have access to the accounting records, books and accounts of the association; and

62.5.2 require from any servant of the association any information the auditor considers necessary for the performance of his or her duties; and

62.5.3 employ any person to assist in auditing the financial affairs of the association; and

62.5.4 examine any member of the Board, or any servant of the association, in relation to the accounting records, books and accounts of the association.

## **63 Common Seal**

63.1 The association may have a common seal.

63.2 If the association has a common seal, the name of the association must appear in legible characters on the common seal.

63.3 The common seal of the association must not be used without the express authority of the Board and every use of that common seal must be recorded by the CEO.

63.4 The affixing of the common seal of the association must be witnessed by any 2 of the following:

- 63.4.1 The President;
- 63.4.2 the CEO;
- 63.4.3 any Board member.

63.5 The common seal of the association must be kept in the custody of the CEO or another person the Board from time to time decides.

63.6 The association may execute a document without using a common seal if the document is signed by:

- 63.6.1 any two Board members; or
- 63.6.2 one Board Member and a person authorised by the Board.

## **64 Winding Up**

64.1 The association may be wound up in the manner provided for in the Act.

## **65 Application of surplus assets**

65.1 If after the winding up of the association there remains 'surplus assets' as defined in the Act, such surplus assets shall be distributed to any organisation which has similar objects and has Constitution which prohibit the distribution of its assets and income to its members.

65.2 The association may determine to distribute surplus assets to nominated charities.

65.3 Such organisation or organisations shall be identified and determined by a resolution of members in general meeting.

## **Miscellaneous**

### **Resolution of Disputes**

## **66 Application**

66.1 The grievance procedure set out in this clause applies to disputes under this Constitution between—

- 66.1.1 a member and another member;
- 66.1.2 a member and the Board;
- 66.1.3 a member and the association.

66.2 A member must not initiate a grievance procedure in relation to a matter that is the subject of a disciplinary procedure until the disciplinary procedure has been completed.

66.3 In this clause "member" includes any former member whose membership ceased not more than six months before the dispute occurred.

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

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

## **68 Appointment of mediator**

68.1 If the parties to a dispute are unable to resolve the dispute between themselves within the time required by clause 67.1 0, the parties must within 10 days—

- 68.1.1 notify the Board of the dispute; and
- 68.1.2 agree to or request the appointment of a mediator; and
- 68.1.3 attempt in good faith to settle the dispute by mediation.

- 68.2 The mediator must be—
- 68.2.1 a person chosen by agreement between the parties; or
  - 68.2.2 in the absence of agreement—
    - 68.2.2.1 if the dispute is between a member and another member—a person appointed by the Board; or
    - 68.2.2.2 if the dispute is between a member and the Board or the association—a person appointed or employed by the Mediation SA.
- 68.3 A mediator appointed by the Board may be a member or former member of the association but in any case must not be a person who—
- 68.3.1 has a personal interest in the dispute; or
  - 68.3.2 is biased in favour of or against any party.

### **69 Mediation process**

- 69.1 The mediator to the dispute, in conducting the mediation, must—
- 69.1.1 give each party every opportunity to be heard; and
  - 69.1.2 allow due consideration by all parties of any written statement submitted by any party; and
  - 69.1.3 ensure that natural justice is accorded to the parties throughout the mediation process.
- 69.2 The mediator must not determine the dispute.

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

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

### **71 Service of notices**

- 71.1 For the purpose of this Constitution, a notice may be served on or given to a person:
- 71.1.1 by delivering it to the person personally, or
  - 71.1.2 by sending it by pre-paid post to the address of the person, or
  - 71.1.3 by sending it by facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- 71.2 For the purpose of this Constitution, a notice is taken, unless the contrary is proved, to have been given or served:
- 71.2.1 in the case of a notice given or served personally, on the date on which it is received by the addressee, and
  - 71.2.2 in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post, and
  - 71.2.3 in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent or, if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.

### **72 Alteration of Constitution**

- 72.1 This Constitution may be altered (including an alteration to the association's name) by special resolution of the members of the association. This includes rescission or replacement by a substitute constitution.
- 72.2 The alteration shall be registered as required by the Act.



**73 Effect of Constitution**

73.1 This Constitution bind every member and the association and each member agrees to comply with the Constitution.

**74 Inconsistency between Constitution and Act**

74.1 If there is any inconsistency between this Constitution and the Act, the Act prevails.

SCHEDULE 1

FORM OF PROXY

[Name of association]:

I, \_\_\_\_\_ of \_\_\_\_\_, being  
a member of the association, appoint \_\_\_\_\_  
of \_\_\_\_\_  
as my proxy to vote for me on my behalf at the (annual) general meeting of the association, to  
be held on the \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_  
and at any adjournment of the meeting.  
Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ .  
Signature

WHERE PROXY IS DIRECTED TO VOTE A CERTAIN WAY

[Name of association]:

I, \_\_\_\_\_ of \_\_\_\_\_, being  
a member of the association, appoint \_\_\_\_\_  
of \_\_\_\_\_  
as my proxy to vote for me on my behalf at the (annual) general meeting of the association, to  
be held on the \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_  
and at any adjournment of the meeting.  
Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ .  
Signature

This form is to be used \*in favour of/\*against [*strike out whichever is not wanted*] the following resolutions—

[List relevant resolutions]