



## **RULES of ASSOCIATION**

### **ANARE CLUB (INCORPORATED)**

**(Registered No A0014408G)**



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**RULES of ASSOCIATION  
2013 as amended 2018**

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# ANARE CLUB INC.

(Registered No A0014408G)

## RULES OF ASSOCIATION

### *Notes*

*The persons who from time to time are members of the Association are an incorporated association by the name given in rule 1 of these Rules.*

*Under section 46 of the **Associations Incorporation Reform Act 2012**, these Rules are taken to constitute the terms of a contract between the Association and its members.*

### PART 1 – PRELIMINARY

#### 1 Name

The name of the incorporated association is "The ANARE Club Incorporated".

#### *Note*

*Under section 23 of the Act, the name of the association and its registration number must appear on all its business documents.*

#### 2 Purposes

The purposes of the association are

- (1) To promote and sustain contact and interaction between and among current and previous Australian Antarctic expeditioners.
- (2) To provide services of value to members.
- (3) To provide support and assistance to expeditioners and their families.
- (4) To maintain a mutually supportive relationship with the Australian Antarctic Division.
- (5) To liaise with other organisations and agencies involved in Antarctic activities and affairs.
- (6) To generate awareness of Australian Antarctic history, and to contribute to archival resources.
- (7) To serve as a source of information and informed opinion on Antarctic issues and developments.

- (8) To generate awareness and interest among the wider public in issues and developments affecting Antarctica and in particular the Australian Antarctic Territory and Macquarie Island.
- (9) To establish and operate Club facilities as required.

### **3 Financial year**

The financial year of the Association is each period of 12 months ending on 30<sup>th</sup> June.

### **4. Definitions**

In these Rules –

*absolute majority*, of the National Council, means a majority of the National Council members currently holding office and entitled to vote at the time (as distinct from a majority of National Council members present at a National Council meeting);

*associate member* means a member referred to in rule 14(1);

*Chairperson*, of a general meeting or National Council meeting, means the person chairing the meeting as required under rule 46;

*National Council* means the National Council having management of the business of the Association (hereinafter referred to as the National Council);

*National Council meeting* means a meeting of the National Council held in accordance with these Rules;

*National Council member* means a member of the National Council elected or appointed under Division 3 of Part 5;

*disciplinary appeal meeting* means a meeting of the members of the Association convened under rule 23(3);

*disciplinary meeting* means a meeting of the Committee convened for the purposes of rule 22;

*disciplinary subcommittee* means the subcommittee appointed under rule 20;

*financial year* means the 12 month period specified in rule 3;

*general meeting* means a general meeting of the members of the Association convened in accordance with Part 4 and includes an annual general meeting, a special general meeting and a disciplinary appeal meeting;

*member* means a member of the Association;

*member entitled to vote* means a member who under rule 13(2) is entitled to vote at a general meeting;

*special resolution* means a resolution that requires not less than three-quarters of the members voting at a general meeting, whether in person or by proxy, to vote in favour of the resolution;

*the Act* means the **Associations Incorporation Reform Act 2012 (Victoria)** and includes any regulations made under that Act;

*the Registrar* means the Registrar of Incorporated Associations.

## PART 2 – POWERS OF ASSOCIATION

### 5. Powers of Association

- (1) Subject to the Act, the Association has power to do all things incidental or conducive to achieve its purposes.
- (2) Without limiting subrule (1), the Association may –
  - (a) acquire, hold and dispose of real or personal property;
  - (b) open and operate accounts with financial institutions;
  - (c) invest its money in any security in which trust monies may lawfully be invested;
  - (d) raise and borrow money on any terms and in any manner as it thinks fit;
  - (e) secure the repayment of money raised or borrowed, or the payment of a debt or liability;
  - (f) appoint agents to transact business on its behalf;
  - (g) enter into any other contract it considers necessary or desirable.
- (3) The Association may only exercise its powers and use its income and assets (including any surplus) for its purposes.

### 6 Not for profit organisation

- (1) The Association must not distribute any surplus, income or assets directly or indirectly to its members.
- (2) Subrule (1) does not prevent the Association from paying a member –
  - (a) reimbursement for expenses properly incurred by the member; or
  - (b) for goods or services provided by the member –if this is done in good faith on terms no more favourable than if the member was not a member.



**Note**

*Section 33 of the Act provides that an incorporated association must not secure pecuniary profit for its members. Section 4 of the Act sets out in more detail the circumstances under which an incorporated association is not taken to secure pecuniary profit for its members.*

**PART 3 – MEMBERS, DISCIPLINARY PROCEDURES AND GRIEVANCES**

**Division 1 – Membership**

**7 Minimum number of members**

The Association must have at least 5 members.

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

Any person who supports the purposes of the Association is eligible for membership in the appropriate class as contained in rule 14.

**9 Application for membership**

- (1) To apply to become a member of the Association, a person must submit a written application to a committee member stating that the person –
  - (a) wishes to become a member of the Association; and
  - (b) supports the purposes of the Association; and
  - (c) agrees to comply with these Rules.

**Note**

*The Application Form is attached at Appendix A*

- (2) The application –
  - (a) must be signed by the applicant; and
  - (b) must be accompanied by the appropriate subscription fee, except as otherwise determined by the National Council.

**Note**

*The appropriate subscription fee is that fee determined by the Association under rule 12(3).*

**10 Consideration of application**

- (1) As soon as practicable after an application for membership is received, the National Council must decide by resolution whether to accept or reject the application.
- (2) The National Council must notify the applicant in writing of its decision as soon as practicable after the decision is made.
- (3) If the National Council rejects the application, it must return any money accompanying the application to the applicant.
- (4) No reason need be given for the rejection of an application.

## **11 New membership**

- (1) If an application for membership is approved by the National Council –
  - (a) the resolution to accept the membership must be recorded in the minutes of the National Council meeting; and
  - (b) the Secretary must, as soon as practicable, enter the name and address of the new member, and the date of becoming a member, in the register of members.
- (2) A person becomes a member of the Association and, subject to rule 13(2), is entitled to exercise his or her rights of membership from the date, whichever is the later, on which –
  - (a) the National Council approves the person's membership; or
  - (b) the person pays the joining fee.

## **12 Annual subscription and fee on joining**

- (1) At each annual general meeting, the Association must determine –
  - (a) the amount of the annual subscription (if any) for the following financial year; and
  - (b) the date for payment of the annual subscription.
- (2) The Association may determine that a lower annual subscription is payable by any class of members.
- (3) The National Council may determine that any new member who joins after the start of a financial year must, for that financial year, pay a fee equal to –
  - (a) the full annual subscription; or
  - (b) a pro rata annual subscription based on the remaining part of the financial year; or

- (c) a fixed amount determined from time to time by the National Council.
- (4) The rights of a member (including the right to vote) who has not paid the annual subscription by twelve weeks after the due date are suspended until the subscription is paid.

### 13 General rights of members

- (1) A member of the Association who is entitled to vote has the right –
  - (a) to receive notice of general meetings and of proposed special resolutions in the manner and time prescribed by these Rules; and
  - (b) to submit items of business for consideration at a general meeting; and
  - (c) to attend and be heard at general meetings; and
  - (d) to vote at a general meeting; and
  - (e) to have access to the minutes of general meetings and other documents of the Association as provided under rule 75; and
  - (f) to inspect the register of members.
- (2) A member is entitled to vote if –
  - (a) the member is a member other than an subscriber member; and
  - (b) more than 10 business days have passed since he or she became a member of the Association; and
  - (c) the member's membership rights are not suspended for any reason.

### 14 Classes of Membership

- (1) **Full Membership** is open to any person who has travelled to Antarctica or the Southern Ocean (including Macquarie Island, Heard Island, and the MacDonal Islands) in a professional capacity in an expedition organised by the Australian Antarctic Division
- (2) **Associate Membership** is open to any person who has travelled to Antarctica or the Southern Ocean in a professional capacity in an expedition not organised by the Australian Antarctic Division and, at the discretion of the National Council to those who have made a significant contribution to the success of ANARE, Australian Antarctic expeditions or other polar expeditions.
- (3) **Subscriber Membership** is open to any person who is interested in Antarctic affairs A subscriber member must not vote but may have

other rights as determined by the National Council or by resolution at a general meeting.

- (4) **Life Membership** The National Council may recommend to a General Meeting of the Association the bestowal of the privilege of Life Membership to any financial Full Member of the Association who in its opinion has made a distinguished contribution to the success of the Association. Election to Life Membership shall be by a simple majority at a General Meeting.
- (5) **Honorary Membership** The National Council may bestow Honorary Membership on any person who is not otherwise a member and who in its opinion has made a significant contribution to Antarctic affairs.

*Note:*

*it is a duty of the National Council to restrict the bestowal of Honorary and Life Membership so that these continue to be awards of high esteem.*

## **15 Rights not transferable**

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

## **16 Ceasing membership**

- (1) The membership of a person ceases on resignation, expulsion or death.
- (2) If a person ceases to be a member of the Association, the Secretary must, as soon as practicable, enter the date the person ceased to be a member in the register of members.

## **17 Resigning as a member**

- (1) A member may resign by notice in writing given to the Association.

*Note*

*Rule 74(3) sets out how notice may be given to the association. It includes by post or by handing the notice to a member of the National Council.*

- (2) A member is taken to have resigned if –
  - (a) the member's annual subscription is more than 12 months in arrears and in the opinion of National Council resignation is appropriate; or
  - (b) where no annual subscription is payable –

- (i) the Secretary has made a written request to the member to confirm that he or she wishes to remain a member; and
- (ii) the member has not, within 3 months after receiving that request, confirmed in writing that he or she wishes to remain a member.

## **18 Register of members**

- (1) The Secretary must keep and maintain a register of members that includes –
  - (a) for each current member –
    - (i) the member's name;
    - (ii) the address for notice last given by the member;
    - (iii) the date of becoming a member;
    - (iv) if the member is an associate member, a note to that effect;
    - (v) any other information determined by the National Council; and
  - (b) for each former member, the date of ceasing to be a member.
- (2) Any member may, at a reasonable time and free of charge, inspect the register of members.

### **Note**

*Under section 59 of the Act, access to the personal information of a person recorded in the register of members may be restricted in certain circumstances. Section 58 of the Act provides that it is an offence to make improper use of information about a person obtained from the Register of Members. These sections are appended as Appendix G.*

## **Division 2 – Disciplinary action**

### **19 Grounds for taking disciplinary action**

The Association may take disciplinary action against a member in accordance with this Division if it is determined that the member –

- (a) has failed to comply with these Rules; or
- (b) refuses to support the purposes of the Association; or
- (c) has engaged in conduct prejudicial to the Association.

## **20 Disciplinary subcommittee**

- (1) If the National Council is satisfied that there are sufficient grounds for taking disciplinary action against a member, the National Council must appoint a disciplinary subcommittee to hear the matter and determine what action, if any, to take against the member.
- (2) The members of the disciplinary subcommittee –
  - (a) may be National Council members, members of the Association or anyone else; but
  - (b) must not be biased against, or in favour of, the member concerned.

## **21 Notice to member**

- (1) Before disciplinary action is taken against a member, the Secretary must give written notice to the member –
  - (a) stating that the Association proposes to take disciplinary action against the member; and
  - (b) stating the grounds for the proposed disciplinary action; and
  - (c) specifying the date, place and time of the meeting at which the disciplinary subcommittee intends to consider the disciplinary action (the *disciplinary meeting*); and
  - (d) advising the member that he or she may do one or both of the following –
    - (i) attend the disciplinary meeting and address the disciplinary subcommittee at that meeting;
    - (ii) give a written statement to the disciplinary subcommittee at any time before the disciplinary meeting; and
  - (e) setting out the member's appeal rights under rule 23.
- (2) The notice must be given no earlier than 28 days, and no later than 14 days, before the disciplinary meeting is held.

## **22 Decision of subcommittee**

- (1) At the disciplinary meeting, the disciplinary subcommittee must –
  - (a) give the member an opportunity to be heard; and
  - (b) consider any written statement submitted by the member.
- (2) After complying with subrule (1), the disciplinary subcommittee may –
  - (a) take no further action against the member; or
  - (b) subject to subrule (3) –

- (i) reprimand the member; or
  - (ii) suspend the membership rights of the member for a specified period; or
  - (iii) expel the member from the Association.
- (3) The disciplinary subcommittee may not fine the member.
- (4) The suspension of membership rights or the expulsion of a member by the disciplinary subcommittee under this rule takes effect immediately after the vote is passed.

### **23 Appeal rights**

- (1) A person whose membership rights have been suspended or who has been expelled from the Association under rule 22 may give notice to the effect that he or she wishes to appeal against the suspension or expulsion.
- (2) The notice must be in writing and given –
- (a) to the disciplinary subcommittee immediately after the vote to suspend or expel the person is taken; or
  - (b) to the Secretary not later than 48 hours after the vote.
- (3) If a person has given notice under subrule (2), a disciplinary appeal meeting must be convened by the National Council as soon as practicable, but in any event not later than 21 days, after the notice is received.
- (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 –
- (a) specify the date, time and place of the meeting; and
  - (b) state –
    - (i) the name of the person against whom the disciplinary action has been taken; and
    - (ii) the grounds for taking that action; and
    - (iii) that at the disciplinary appeal meeting the members present must vote on whether the decision to suspend or expel the person should be upheld or revoked.

### **24 Conduct of disciplinary appeal meeting**

- (1) At a disciplinary appeal meeting –

- (a) no business other than the question of the appeal may be conducted; and
  - (b) the National Council must state the grounds for suspending or expelling the member and the reasons for taking that action; and
  - (c) the person whose membership has been suspended or who has been expelled must be given an opportunity to be heard.
- (2) After complying with subrule (1), the members present and entitled to vote at the meeting must vote by secret ballot on the question of whether the decision to suspend or expel the person should be upheld or revoked.
- (3) A member may not vote by proxy at the meeting.
- (4) The decision is upheld if not less than three quarters of the members voting at the meeting vote in favour of the decision.

### **Division 3 – Grievance procedure**

#### **25 Application**

- (1) The grievance procedure set out in this Division applies to disputes under these Rules between –
- (a) a member and another member;
  - (b) a member and the National Council;
  - (c) a member and the Association.
- (2) A member must not initiate a grievance procedure in relation to a matter that is the subject of a disciplinary procedure until the disciplinary procedure has been completed.

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

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

#### **27 Appointment of mediator**

- (1) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 26, the parties must within 10 days –



- (a) notify the National Council of the dispute; and
  - (b) agree to or request the appointment of a mediator; and
  - (c) attempt in good faith to settle the dispute by mediation.
- (2) The mediator must be –
- (a) a person chosen by agreement between the parties; or
  - (b) in the absence of agreement –
    - (i) if the dispute is between a member and another member – a person appointed by the National Council; or
    - (ii) if the dispute is between a member and the National Council or the Association – a person appointed or employed by the Dispute Settlement Centre of Victoria.
- (3) A mediator appointed by the National Council may be a member or former member of the Association but in any case must not be a person who –
- (a) has a personal interest in the dispute; or
  - (b) is biased in favour of or against any party.

## **28 Mediation process**

- (1) The mediator to the dispute, in conducting the mediation, must –
- (a) give each party every opportunity to be heard; and
  - (b) allow due consideration by all parties of any written statement submitted by any party; and
  - (c) ensure that natural justice is accorded to the parties throughout the mediation process.
- (2) The mediator must not determine the dispute.

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

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.

## **PART 4 – GENERAL MEETINGS OF THE ASSOCIATION**

### **30 Annual general meetings**

- (1) The National Council must convene an annual general meeting of the Association to be held within 5 months after the end of each financial year.

- (2) Despite subrule (1), the Association may hold its first annual general meeting at any time within 18 months after its incorporation.
- (3) The National Council may determine the date, time and place of the annual general meeting.
- (4) The ordinary business of the annual general meeting is as follows –
  - (a) to confirm the minutes of the previous annual general meeting and of any special general meeting held since then;
  - (b) to receive and consider –
    - (i) the annual report of the National Council on the activities of the Association during the preceding financial year; and
    - (ii) the financial statements of the Association for the preceding financial year submitted by the National Council in accordance with Part 7 of the Act;
  - (c) to elect the members of the National Council;
  - (d) to confirm or vary the amounts (if any) of the annual subscription and joining fee.
- (5) The annual general meeting may also conduct any other business of which notice has been given in accordance with these Rules.

### **31 Special general meetings**

- (1) Any general meeting of the Association, other than an annual general meeting or a disciplinary appeal meeting, is a special general meeting.
- (2) The National Council may convene a special general meeting whenever it thinks fit.
- (3) No business other than that set out in the notice under rule 33 may be conducted at the meeting.

#### ***Note***

*General business may be considered at the meeting if it is included as an item for consideration in the notice under rule 33 and the majority of members at the meeting agree.*

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

- (1) The National Council must convene a special general meeting if a request to do so is made in accordance with subrule (2) by at least 10% of the total number of members.
- (2) A request for a special general meeting must –
  - (a) be in writing; and
  - (b) state the business to be considered at the meeting and any resolutions to be proposed; and

- (c) include the names and signatures of the members requesting the meeting; and
  - (d) be given to the Secretary.
- (3) If the National Council does not convene a special general meeting within one month after the date on which the request is made, the members making the request (or any of them) may convene the special general meeting.
- (4) A special general meeting convened by members under subrule (3) –
  - (a) must be held within 3 months after the date on which the original request was made; and
  - (b) may only consider the business stated in that request.
- (5) The Association must reimburse all reasonable expenses incurred by the members convening a special general meeting under subrule (3).

### **33 Notice of general meetings**

- (1) The Secretary (or, in the case of a special general meeting convened under rule 32(3), the members convening the meeting) must give to each member of the Association –
  - (a) at least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting; or
  - (b) at least 14 days' notice of a general meeting in any other case.
- (2) The notice must –
  - (a) specify the date, time and place of the meeting; and
  - (b) indicate the general nature of each item of business to be considered at the meeting; and
  - (c) if a special resolution is to be proposed –
    - (i) state in full the proposed resolution; and
    - (ii) state the intention to propose the resolution as a special resolution; and
  - (d) comply with rule 34(5).
- (3) This rule does not apply to a disciplinary appeal meeting.

#### ***Note***

*Rule 23(4) sets out the requirements for notice of a disciplinary appeal meeting.*

### **34 Proxies**

- (1) A member may appoint another member as his or her proxy to vote and speak on his or her behalf at a general meeting other than at a disciplinary appeal meeting.
- (2) The appointment of a proxy must be in writing and signed by the member making the appointment.
- (3) The member appointing the proxy may give specific directions as to how the proxy is to vote on his or her behalf, otherwise the proxy may vote on behalf of the member in any matter as he or she sees fit.
- (4) If the National Council has approved a form for the appointment of a proxy, the member may use any other form that clearly identifies the person appointed as the member's proxy and that has been signed by the member.
- (5) Notice of a general meeting given to a member under rule 33 must—
  - (a) state that the member may appoint another member as a proxy for the meeting; and
  - (b) include a copy of any form that the National Council has approved for the appointment of a proxy.
- (6) A form appointing a proxy must be given to the Chairperson of the meeting before or at the commencement of the meeting.
- (7) A form appointing a proxy sent by post or electronically is of no effect unless it is received by the Association no later than 24 hours before the commencement of the meeting.

#### ***Note***

*The form for appointment of a proxy is to be found at Appendix B*

### **35 Use of technology**

- (1) A member not physically present at a general meeting may be permitted to participate in the meeting by the use of technology that allows that member and the members present at the meeting to clearly and simultaneously communicate with each other.
- (2) For the purposes of this Part, a member participating in a general meeting as permitted under subrule (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 Quorum at general meetings**

- (1) No business may be conducted at a general meeting unless a quorum of members is present.

- (2) The quorum for a general meeting is the presence (physically, by proxy or as allowed under rule 35) of 10% of the members entitled to vote.
- (3) If a quorum is not present within 30 minutes after the notified commencement time of a general meeting –
  - (a) in the case of a meeting convened by, or at the request of, members under rule 32 – the meeting must be dissolved;

**Note**

*If a meeting convened by, or at the request of, members is dissolved under this subrule, the business that was to have been considered at the meeting is taken to have been dealt with. If members wish to have the business reconsidered at another special meeting, the members must make a new request under rule 32.*

- (b) in any other case –
    - (i) the meeting must be adjourned to a date not more than 21 days after the adjournment; and
    - (ii) notice of the date, time and place to which the meeting is adjourned must be given at the meeting and confirmed by written notice given to all members as soon as practicable after the meeting.
- (4) If a quorum is not present within 30 minutes after the time to which a general meeting has been adjourned under subrule (3)(b), the members present at the meeting (if not fewer than 3) may proceed with the business of the meeting as if a quorum were present.

### **37 Adjournment of general meeting**

- (1) The Chairperson of a general meeting at which a quorum is present may, with the consent of a majority of members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- (2) Without limiting subrule (1), a meeting may be adjourned –
  - (a) if there is insufficient time to deal with the business at hand; or
  - (b) to give the members more time to consider an item of business.

**Example**

*The members may wish to have more time to examine the financial statements submitted by the National Council at an annual general meeting.*

- (3) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned

- (4) Notice of the adjournment of a meeting under this rule is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with rule 33.

### **38 Voting at general meeting**

- (1) On any question arising at a general meeting –
- (a) subject to subrule (3), each member who is entitled to vote has one vote; and
  - (b) members may vote personally or by proxy; and
  - (c) except in the case of a special resolution, the question must be decided on a majority of votes.
- (2) If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- (3) If the question is whether or not to confirm the minutes of a previous meeting, only members who were present at that meeting may vote.
- (4) This rule does not apply to a vote at a disciplinary appeal meeting conducted under rule 24.

### **39 Special resolutions**

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

#### **Note**

*In addition to certain matters specified in the Act, a special resolution is required –*

- (a) *to remove a National Council member from office ;*
- (b) *to alter these Rules, including changing the name or any of the purposes of the Association. (see Appendix F)*

### **40 Determining whether resolution carried**

- (1) Subject to subsection (2), the Chairperson of a general meeting may, on the basis of a show of hands, declare that a resolution has been –
- (a) carried; or
  - (b) carried unanimously; or
  - (c) carried by a particular majority; or
  - (d) lost –
- and an entry to that effect in the minutes of the meeting is conclusive proof of that fact.

- (2) If a poll (where votes are cast in writing) is demanded by three or more members on any question –
  - (a) the poll must be taken at the meeting in the manner determined by the Chairperson of the meeting; and
  - (b) the Chairperson must declare the result of the resolution on the basis of the poll.
- (3) A poll demanded on the election of the Chairperson or on a question of an adjournment must be taken immediately.
- (4) A poll demanded on any other question must be taken before the close of the meeting at a time determined by the Chairperson.

#### **41 Minutes of general meeting**

- (1) The National Council must ensure that minutes are taken and kept of each general meeting.
- (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. The minutes should be an official record of actions taken by the National Council and not a transcript of what individuals say at the meetings.
- (3) In addition, the minutes of each annual general meeting must include –
  - (a) the names of the members attending the meeting; and
  - (b) proxy forms given to the Chairperson of the meeting under rule 34(6); and
  - (c) the financial statements submitted to the members in accordance with rule 30(4)(b)(ii); and
  - (d) the certificate signed by two National Council members certifying that the financial statements give a true and fair view of the financial position and performance of the Association; and
  - (e) any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.

### **PART 5 – NATIONAL COUNCIL**

#### **Division 1 – Powers of National Council**

#### **42 Role and powers**

- (1) The business of the Association must be managed by or under the direction of the National Council

- (2) The National Council may exercise all the powers of the Association except those powers that these Rules or the Act require to be exercised by general meetings of the members of the Association.
- (3) The National Council may –
  - (a) appoint and remove staff;
  - (b) establish subcommittees consisting of members with terms of reference it considers appropriate.

#### **43 Delegation**

- (1) The National Council may delegate to a member of the National Council, a subcommittee or staff, any of its powers and functions other than –
  - (a) this power of delegation; or
  - (b) a duty imposed on the National Council by the Act or any other law.
- (2) The delegation must be in writing and may be subject to the conditions and limitations the National Council considers appropriate.
- (3) The National Council may, in writing, revoke a delegation wholly or in part.

### **Division 2 – Composition of National Council and duties of members**

#### **44 Composition of National Council**

The National Council consists of –

- (a) a President; and
- (b) a Vice-President; and
- (c) a Secretary; and
- (d) a Treasurer; and
- (e) not more than nine ordinary members (if any) elected under rule 53.
- (f) the editor of the journal *Aurora* will be an *ex officio* member



- (g) the immediate past president shall be an *ex officio* member of the National Council for one year after ceasing to hold the office of President.

#### **45 General Duties**

- (1) As soon as practicable after being elected or appointed to the National Council, each council member must become familiar with these Rules and the Act.
- (2) The National Council is collectively responsible for ensuring that the Association complies with the Act and that individual members of the National Council comply with these Rules.
- (3) National Council members must exercise their powers and discharge their duties with reasonable care and diligence.
- (4) National Council 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.
- (5) National Council members and former National Council members must not make improper use of –
  - (a) their position; or
  - (b) information acquired by virtue of holding their position –so as to gain an advantage for themselves or any other person or to cause detriment to the Association.

#### **Note**

*See also Division 3 of Part 6 of the Act which sets out the general duties of the office holders of an incorporated association. These are attached as Appendix E*

- (6) In addition to any duties imposed by these Rules, a National Council member must perform any other duties imposed from time to time by resolution at a general meeting.

#### **46 President and Vice-President**

- (1) Subject to subrule (2), the President or, in the President's absence, the Vice-President is the Chairperson for any general meetings and for any National Council meetings.
- (2) If the President and the Vice-President are both absent, or are unable to preside, the Chairperson of the meeting must be –
  - (a) in the case of a general meeting – a member elected by the other members present; or

- (b) in the case of a National Council meeting – a National Council member elected by the other National Council members present.

#### **47 Secretary**

- (1) The Secretary must perform any duty or function required under the Act to be performed by the secretary of an incorporated association.

##### *Example*

*Under the Act, the secretary of an incorporated association is responsible for lodging documents of the association with the Registrar.*

- (2) The Secretary must –
  - (a) maintain the register of members in accordance with rule 18; and
  - (b) keep custody of the common seal (if any) of the Association and, except for the financial records referred to in rule 70(3), all books, documents and securities of the Association in accordance with rules 72 and 75; and
  - (c) subject to the Act and these Rules, provide members with access to the register of members, the minutes of general meetings and other books and documents; and
  - (d) perform any other duty or function imposed on the Secretary by these Rules.
- (3) The Secretary must give to the Registrar notice of his or her appointment within 14 days after the appointment.

##### *Note*

*The legal duties and responsibilities of the Secretary are contained in ss 72, 73, 74, 75 and 76. These are reproduced as Appendix H.*

#### **48 Treasurer**

- (1) The Treasurer must –
  - (a) receive all moneys paid to or received by the Association and issue receipts for those moneys in the name of the Association; and
  - (b) ensure that all moneys received are paid into the account of the Association within 5 working days after receipt; and
  - (c) make any payments authorised by the National Council or by a general meeting of the Association from the Association's funds; and
  - (d) ensure cheques are signed by at least 2 National Council members.
- (2) The Treasurer must –

- (a) ensure that the financial records of the Association are kept in accordance with the Act; and
  - (b) coordinate the preparation of the financial statements of the Association and their certification by the National Council prior to their submission to the annual general meeting of the Association.
- (3) The Treasurer must ensure that at least one other National Council member has access to the accounts and financial records of the Association.

### **Division 3 – Election of National Council members and tenure of office**

#### **49 Who is eligible to be a National Council member**

A member is eligible to be elected or appointed as a National Council member if the member –

- (a) is 18 years or over; and
- (b) is entitled to vote at a general meeting.

#### **50 Positions to be declared vacant**

- (1) This rule applies to –
- (a) the first annual general meeting of the Association after its incorporation; or
  - (b) any subsequent annual general meeting of the Association, after the annual report and financial statements of the Association have been received.
- (2) The Chairperson of the meeting must declare all positions on the National Council vacant and hold elections for those positions in accordance with rules 51 to 54.

#### **51 Nominations**      *Amended 26 May 2018*

- (1) Nominations to fill all positions on the National Council, including officer bearers, must be called in advance of the Annual General Meeting, giving sufficient time for nominations to close and a ballot to be held, if required, prior to the date of the Annual General Meeting at which the results of the ballot are to be announced.
- (2) An eligible member of the Association may –
- (a) nominate himself or herself; or
  - (b) with the member's consent, be nominated by another member.

- (3) The nomination form must carry the signatures of two members as proposer and seconder, as well as the signature of the candidate.
- (4) An eligible member may nominate or be nominated for more than one position.

**52 Election of President etc.** *Amended 26 May 2018*

- (1) Should there be only one nomination for any of the following, President, Vice President, Secretary and Treasurer, the nominated member is to be declared elected by the chairperson of the Annual General Meeting.
- (2) Should there be more than one nomination for any position and a ballot be required, an opportunity to take part in the ballot must be provided to all financial members.
- (3) Once the result of the ballot for President has been announced, the newly elected President may take over as Chairperson of the meeting.

**53 Election of ordinary members** *Amended 26 May 2018*

- (1) The National Council is to contain up to 9 ordinary members.
- (2) Should the number of nominations for election as ordinary members be less than or equal to the total number to be elected, those persons are to be declared elected by the chairperson of the Annual General Meeting.
- (3) Should the number of nominations exceed the number to be elected and a ballot be required, an opportunity to take part in the ballot must be provided to all financial members.

**54 Ballot** *Amended 26 May 2018*

- (1) To provide for the eventuality that a ballot for any position is required, the National Council, in advance of the closing of nominations, shall appoint a Returning Officer and two scrutineers to count the votes and report the result to the Annual General Meeting.
- (2) The Returning Officer and the scrutineers shall not be candidates for election to any position on the National Council.

- (3) The ballot may be conducted using hard copy ballot papers sent to all members, or by electronic means, or a combination of the two methods.
- (4) All votes must be in the hands of the Returning Officer one week prior to the holding of the Annual General Meeting.
- (5) Members are to mark their choice of candidates in a manner which, in the opinion of the Returning Officer, clearly indicates their intention.

## **55 Term of office**

- (1) Subject to subrule (3) and rule 56, a National Council member holds office until the positions of the National Council are declared vacant at the next annual general meeting.
- (2) A National Council member may be re-elected.
- (3) A general meeting of the Association may –
  - (a) by special resolution remove a National Council member from office; and
  - (b) elect an eligible member of the Association to fill the vacant position in accordance with this Division.
- (4) A member who is the subject of a proposed special resolution under subrule (3)(a) may make representations in writing to the Secretary or President of the Association (not exceeding a reasonable length) and may request that the representations be provided to the members of the Association.
- (5) The Secretary or the President may give a copy of the representations to each member of the Association or, if they are not so given, the member may require that they be read out at the meeting at which the special resolution is to be proposed.

## **56 Vacation of office**

- (1) A National Council member may resign from the National Council by written notice addressed to the National Council.
- (2) A person ceases to be a National Council member if he or she –
  - (a) ceases to be a member of the Association; or
  - (b) fails to attend 3 consecutive National Council meetings (other than special or urgent National Council meetings) without leave of absence under rule 67; or

- (c) otherwise ceases to be a National Council member by operation of section 78 of the Act.

**Note**

*A National Council member may not hold the office of secretary if he or she does not reside in Australia. See s.72(2)(c) of the Act.*

**57 Filling casual vacancies**

- (1) The National Council may appoint an eligible member of the Association to fill a position on the National Council that –
  - (a) has become vacant under rule 56; or
  - (b) was not filled by election at the last annual general meeting.
- (2) If the position of Secretary becomes vacant, the National Council must appoint a member to the position within 14 days after the vacancy arises.
- (3) Rule 55 applies to any National Council member appointed by the National Council under subrule (1) or (2).
- (4) The National Council may continue to act despite any vacancy in its membership.

**Division 4 – Meetings of National Council**

**58 Meetings of National Council**

- (1) The National Council must meet at least 4 times in each year at the dates, times and places determined by the National Council.
- (2) The date, time and place of the first National Council meeting must be determined by the members of the National Council as soon as practicable after the annual general meeting of the Association at which the members of the National Council were elected.
- (3) Special National Council meetings may be convened by the President or by any 4 members of the National Council.

**59 Notice of meetings**

- (1) Notice of each National Council meeting must be given to each council member no later than 7 days before the date of the meeting.
- (2) Notice may be given of more than one National Council meeting at the same time.

- (3) The notice must state the date, time and place of the meeting.
- (4) If a special National Council meeting is convened, the notice must include the general nature of the business to be conducted.
- (5) The only business that may be conducted at the meeting is the business for which the meeting is convened.

#### **60 Urgent meetings**

- (1) In cases of urgency, a meeting can be held without notice being given in accordance with rule 59 provided that as much notice as practicable is given to each National Council member by the quickest means practicable.
- (2) Any resolution made at the meeting must be passed by an absolute majority of the National Council.
- (3) The only business that may be conducted at an urgent meeting is the business for which the meeting is convened.

#### **61 Procedure and order of business**

- (1) The procedure to be followed at a meeting of a National Council must be determined from time to time by the National Council.
- (2) The order of business may be determined by the members present at the meeting.

#### **62 Use of technology**

- (1) A National Council member who is not physically present at a National Council meeting may participate in the meeting by the use of technology that allows that National Council member and the National Council members present at the meeting to clearly and simultaneously communicate with each other.
- (2) For the purposes of this Part, a National Council member participating in a National Council meeting as permitted under subrule (1) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

#### **63 Quorum**

- (1) No business may be conducted at a National Council meeting unless a quorum is present.
- (2) The quorum for a National Council meeting is the presence (in person or as allowed under rule 62) of a majority of the National Council members.

- (3) If a quorum is not present within 30 minutes after the notified commencement time of a National Council meeting –
  - (a) in the case of a special meeting – the meeting lapses;
  - (b) in any other case – the meeting must be adjourned to a date no later than 14 days after the adjournment and notice of the time, date and place to which the meeting is adjourned must be given in accordance with rule 59.

#### **64 Voting**

- (1) On any question arising at a National Council meeting, each National Council member present at the meeting has one vote.
- (2) A motion is carried if a majority of National; Council members present at the meeting vote in favour of the motion.
- (3) Subrule (2) does not apply to any motion or question which is required by these Rules to be passed by an absolute majority of the National Council
- (4) If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- (5) Voting by proxy is not permitted.

#### **65 Conflict of interest**

- (1) A National Council member who has a material personal interest in a matter being considered at a National Council meeting must disclose the nature and extent of that interest to the National Council.
- (2) The member –
  - (a) must not be present while the matter is being considered at the meeting; and
  - (b) must not vote on the matter.

##### **Note**

*Under section 81(3) of the Act, if there are insufficient National Council members to form a quorum because a member who has a material personal interest is disqualified from voting on a matter, a general meeting may be called to deal with the matter.*

- (3) This rule does not apply to a material personal interest –
  - (a) that exists only because the member belongs to a class of persons for whose benefit the Association is established; or
  - (b) that the member has in common with all, or a substantial proportion of, the members of the Association.



## **66 Minutes of meeting**

- (1) The National Council must ensure that minutes are taken and kept of each National Council meeting.
- (2) The minutes must record the following –
  - (a) the names of the members in attendance at the meeting;
  - (b) the business considered at the meeting;
  - (c) any resolution on which a vote is taken and the result of the vote;
  - (d) any material personal interest disclosed under rule 65.

## **67 Leave of absence**

- (1) The National Council may grant a council member leave of absence from National Council meetings for a period not exceeding 3 months.
- (2) The National Council must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the National Council member to seek the leave in advance.

## **PART 6 – FINANCIAL MATTERS**

### **68 Source of funds**

The funds of the Association may be derived from joining fees, annual subscriptions, donations, fund-raising activities, grants, interest and any other sources approved by the National Council.

### **69 Management of funds**

- (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.
- (2) Subject to any restrictions imposed by a general meeting of the Association, the National Council may approve expenditure on behalf of the Association.
- (3) The National Council may authorise the Treasurer to expend funds on behalf of the Association (including by electronic funds transfer) up to a specified limit without requiring approval from the National Council for each item on which the funds are expended.
- (4) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by 2 National Council members.
- (5) All funds of the Association must be deposited into the financial account of the Association no later than 5 working days after receipt.

- (6) With the approval of the National Council, the Treasurer 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.

## **70 Financial records**

- (1) The Association must keep financial records that –
  - (a) correctly record and explain its transactions, financial position and performance; and
  - (b) enable financial statements to be prepared as required by the Act.
- (2) The Association must retain the financial records for 7 years after the transactions covered by the records are completed.
- (3) The Treasurer must keep in his or her custody, or under his or her control –
  - (a) the financial records for the current financial year; and
  - (b) any other financial records as authorised by the National Council.

## **71 Financial statements**

- (1) For each financial year, the National Council must ensure that the requirements under the Act relating to the financial statements of the Association are met.
- (2) Without limiting subrule (1), those requirements include –
  - (a) the preparation of the financial statements;
  - (b) if required, the review or auditing of the financial statements;
  - (c) the certification of the financial statements by the National Council;
  - (d) the submission of the financial statements to the annual general meeting of the Association;
  - (e) the lodgement with the Registrar of the financial statements and accompanying reports, certificates, statements and fee.

## **PART 7 – GENERAL MATTERS**

### **72 Common seal**

- (1) The Association may have a common seal.
- (2) If the Association has a common seal –
  - (a) the name of the Association must appear in legible characters on the common seal;

- (b) a document may only be sealed with the common seal by the authority of the National Council and the sealing must be witnessed by the signatures of two National Council members;
- (c) the common seal must be kept in the custody of the Secretary.

### **73 Registered address**

The registered address of the Association is – the address determined from time to time by resolution of the National Council; or

### **74 Notice requirements**

- (1) Any notice required to be given to a member or a National Council member under these Rules may be given –
  - (a) by handing the notice to the member personally; or
  - (b) by sending it by post to the member at the address recorded for the member on the register of members; or
  - (c) by email or facsimile transmission.
- (2) Subrule (1) does not apply to notice given under rule 60.
- (3) Any notice required to be given to the Association or the National Council may be given –
  - (a) by handing the notice to a member of the National Council or
  - (b) by sending the notice by post to the registered address; or
  - (c) by leaving the notice at the registered address; or
  - (d) if the National Council determines that it is appropriate in the circumstances –
    - (i) by email to the email address of the Association or the Secretary; or
    - (ii) by facsimile transmission to the facsimile number of the Association.

### **75 Custody and inspection of books and records**

- (1) Members may on request inspect free of charge –
  - (a) the register of members;
  - (b) the minutes of general meetings;
  - (c) subject to subrule (2), the financial records, books, securities and any other relevant document of the Association, including minutes of National Council meetings.

*Note*

*See note following rule 18 for details of access to the register of members.*

- (2) The National Council may refuse to permit a member to inspect records of the Association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.
- (3) The National Council must on request make copies of these rules available to members and applicants for membership free of charge.
- (4) Subject to subrule (2), a member may make a copy of any of the other records of the Association referred to in this rule and the Association may charge a reasonable fee for provision of a copy of such a record.
- (5) For purposes of this rule –  
*relevant documents* means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of the Association and includes the following –
  - (a) its membership records;
  - (b) its financial statements;
  - (c) its financial records;
  - (d) records and documents relating to transactions, dealings, business or property of the Association.

## **76 State and Territory Councils**

- (1) State and Territory Councils may be established in each State and Territory in Australia.
- (2) State and Territory Councils are responsible for the efficient and economical running of social activities for the Club within the Branch.
- (3) State and Territory Councils are at all times answerable to the National Council and decisions made at State and Territory Council Meetings may be overruled by the National Council.
- (4) The State or Territory Council may consist of the following elected members:
  - a. President
  - b. Vice-President
  - c. Secretary
  - d. Treasurer
  - e. A maximum of five State or Territory Council Members.

- (5) A quorum of a State or Territory Council shall consist of three members.
- (6) The State or Territory Council may co-opt any member to fill a vacancy on the State or Territory Council.
- (7) State and Territory Councils may appoint Regional Representatives in any town or district within the Council area, with a maximum of four Regional Representatives on any State or Territory. In any case, all members of National Council or State and Territory Councils shall be deemed to be Regional Representatives when visiting other Branch Councils or the National Council.
- (8) Unless otherwise notified in writing or in the Club Journal all State and Territory Annual General Meetings shall be held during the State or Territory Mid-Winter celebrations.
- (9) Capitation will be paid to each State and Territory Council representing five percent of the annual subscription for each financial Club Member within the State or Territory area. Capitation shall be paid at the commencement of the financial year and based on numbers at that date.
- (10) Unless otherwise specified the rules that govern the conduct of the National Council Meetings shall also govern the State and Territory Councils Meetings.
- (11) Each State and Territory Council shall prepare an Annual Report detailing its deliberations and activities and that Report shall be presented to the Annual General Meeting of the Club.
- (12) The National Council may withhold payment of capitation levy to a State or Territory Council, pending receipt of a satisfactorily audited report of its financial affairs.
- (13) For the purposes of these Rules, the Australian Capital Territory Council will include members living in the Queanbeyan, Bungendore Yass and Cooma districts.

## **77 Regional Representatives**

Regional Representatives may be elected at the Annual General Meeting. If a Regional Representative is not formally nominated, the National Council may appoint one in any State, Territory or Country.

## **78 Winding up and cancellation**

- (1) The Association may be wound up voluntarily by special resolution.
- (2) In the event of the winding up or the cancellation of the incorporation of the Association, the surplus assets of the Association must not be distributed to any members or former members of the Association.
- (3) Subject to the Act and any court order made under section 133 of the Act, the surplus assets must be given to a body that has similar purposes to the Association and which is not carried on for the profit or gain of its individual members.
- (4) The body to which the surplus assets are to be given must be decided by special resolution.

## **79 Alteration of Rules**

These Rules may only be altered by special resolution of a general meeting of the Association.

### *Note*

*An alteration of these Rules does not take effect unless or until it is approved by the Registrar. If these Rules (other than rule 1, 2 or 3) are altered, the Association is taken to have adopted its own rules, not the model rules. The relevant section of the Act is section 50 which is attached as Appendix F*

## **APPENDICES:**

- A. Application Form**
- B. Appointment of Proxy Form – Annual, General or Special Meetings**
- C. Duties of Office Bearers**
- D. Statutory Duties of Office Bearers and Members of the National Council**
- E. Statutory responsibilities and obligations of office bearers in relation to the financial affairs of the Association**
- F. Alteration of these Rules (Section 50 of the Act)**
- G. Access to Personal Information**
- H. Statutory Duties of the Secretary**

**APPENDIX A**



**APPLICATION FOR MEMBERSHIP OF THE ANARE CLUB INCORPORATED**

I, \_\_\_\_\_ of \_\_\_\_\_ desire to become a  
*(name and occupation)* *(address)*

member of the ANARE Club Incorporated

In the event of my admission as a member, I agree to be bound by the rules of the Club for the time being in force.

Signature of Applicant

Date

I, \_\_\_\_\_, a member of the Club,  
*(name)*

nominate the applicant, who is personally known to me, for membership of the Club.

Signature of Proposer

Date

I, \_\_\_\_\_, a member of the Association, second

(name)

the nomination of the applicant, who is personally known to me, for membership of the Club.

Signature of Seconder

Date

---

## APPENDIX B



### FORM OF APPOINTMENT OF PROXY

I,

(name)

of

(address)

being a member of the ANARE Club Incorporated

appoint

(name of proxy holder)

of

(address of proxy holder)

being a member of the A.N.A.R.E. Club Incorporated, as my proxy to vote on my behalf at the \*annual/\*special general meeting of the A.N.A.R.E. Club Incorporated to be held on—

(date of meeting)

and at any adjournment of that meeting.



My proxy is authorised to vote \*in favour of/\*against the following resolution: [*insert details of resolution*]

Signed

Date

\*Delete if not applicable

---

## APPENDIX C

### DUTIES OF OFFICE BEARERS

The following are the duties of office bearers within the context of the ANARE Club (Inc.) The statutory (i.e. legal) obligations of all office bearers and members of National Council are to be found in Appendix **D**.

#### President.

It shall be the duty of the President to:

preside at meetings

preserve order at all meetings

give casting votes on all questions when required

sign the minutes of the previous meeting when confirmed by votes

have the power to call Special Meetings in conjunction with the Secretary  
sign cheques in conjunction with the Vice-President or Secretary or Treasurer

make statements on behalf of Club on matters relating to its objects. Where no formal club policy on a matter exists the President may, at his discretion,

make statements which he believes would best reflect the opinion of the Club members. The text of any statement made is to be tabled at the next meeting of the Council.

#### Vice-President.

It shall be the duty of the Vice-President to:

render assistance to the President on all occasions.

In the President's absence assume the powers and duties normally carried by the President.

sign cheques in conjunction with the President or Secretary or Treasurer.

#### Secretary.

Duties of the Secretary are to be carried out in conjunction with the President and shall include:

convene and attend all meetings, except such as he may be excused by the meeting from attending

keeping Minutes of all General Meetings and Council Meetings

#### Treasurer.

Duties of the Treasurer shall include:

produce a financial statement when called upon by the Council and to prepare an audited balance sheet for the Annual General Meeting.

collect and receive all monies due to the Club and make all payments authorised by the Club

keep correct accounts and books showing the financial affairs of the Club with full details of all receipts and expenditure connected with the activities of the club. The accounts and books referred shall be available for inspection by members.

sign cheques in conjunction with the President or Secretary or Vice-President.

## APPENDIX D

### STATUTORY DUTIES OF OFFICE BEARERS AND MEMBERS OF THE NATIONAL COUNCIL

*Note: for the purposes of this Appendix, references in the Act to “committee” are to be read as “National Council”*

#### **80 Disclosure of material personal interest**

- (1) A member of the committee of an incorporated association who has a material personal interest in a matter being considered at a committee meeting must, as soon as the member becomes aware of his or her interest in the matter, disclose the nature and extent of that interest to the committee.

Penalty: 10 penalty units.

- (2) A member of the committee of an incorporated association who has a material personal interest in a matter being considered at a committee meeting must disclose the nature and extent of his or her interest in the matter at the next general meeting of the association.

Penalty: 10 penalty units.

- (3) Subsections (1) and (2) do not apply in respect of a material personal interest –

(a) that exists only because the member –

(i) is an employee of the association; or

(ii) belongs to a class of persons for whose benefit the association is established; or

- (b) that the member has in common with all, or a substantial proportion of, the members of the association.
- (4) If a member of the committee of an incorporated association discloses a material personal interest in a contract or proposed contract, in accordance with this section and the member has complied with section 81(1) or the member's interest is not required to be disclosed because of subsection (3) –
  - (a) the contract is not liable to be avoided by the association on any ground arising from the fiduciary relationship between the member and the association; and
  - (b) the member is not liable to account for profits derived from the contract.
- (5) A disclosure of a material personal interest required by subsection (1) or (2) must give details of –
  - (a) the nature and extent of the interest; and
  - (b) the relation of the interest to the activities of the incorporated association.
- (6) The details referred to in subsection (5) must be recorded in the minutes of the committee meeting at which the material personal interest is disclosed.

### **81 Matter on which committee member has material personal interest**

- (1) A member of the committee of an incorporated association who has a material personal interest in a matter being considered at a committee meeting must not –
  - (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter.
 Penalty: 10 penalty units.
- (2) Subsection (1) does not apply in respect of a material personal interest –
  - (a) that exists only because the member belongs to a class of person for whose benefit the association is established; or
  - (b) that the member has in common with all, or a substantial proportion of, the members of the association.
- (3) If there are not enough committee members to form a quorum to consider a matter because of subsection (1) –
  - (a) one or more committee members (including those who have a material personal interest in the matter) may call a general meeting; and
  - (b) the general meeting may pass a resolution to deal with the matter.

## Division 3 – Duties of office holders

### 82 Definition

In this Division –

*office holder*, of an incorporated association, means any of the following –

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- (a) a member of the committee;
- (b) the secretary;
- (c) a person, including an employee of the association, who makes, or participates in making, decisions that affect the whole, or a substantial part, of the operations of the association;
- (d) a person who has the capacity to significantly affect the association's financial standing;
- (e) a person in accordance with whose instructions or wishes the committee of the association are accustomed to act (but excluding a person who gives advice to the association in the proper performance of functions attaching to the person's professional capacity or to the person's business relationship with members of the committee or with the association).

### 83 Improper use of information or position

- (1) An office holder or former office holder of an incorporated association must not make improper use of information acquired by virtue of holding that office –
  - (a) to gain an advantage for himself or herself or any other person; or
  - (b) to cause detriment to the association.

#### Note

Under section 146, subsection (1) is declared to be an applied Corporations legislation matter in relation to the provisions of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act. The effect of that application is that subsection (1) is a civil penalty provision and a person who contravenes this provision may be ordered to pay a pecuniary penalty of up to \$20 000.

- (2) An office holder of an incorporated association must not make improper use of that office –
  - (a) to gain an advantage for himself or herself or any other person; or
  - (b) to cause detriment to the association.

#### Note

Under section 146, subsection (2) is declared to be an applied Corporations legislation matter in relation to the provisions of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act. The effect of that application is that subsection (2) is a civil penalty provision and a person who contravenes this provision may be ordered to pay a pecuniary penalty of up to \$20 000.

- (3) An office holder or former office holder of an incorporated association must not knowingly or recklessly make improper use of information in the manner described in subsection (1).

Penalty: 60 penalty units.

- (4) An office holder of an incorporated association must not knowingly or recklessly make improper use of that office in the manner described in subsection (2).

Penalty: 60 penalty units.

- (5) If a person is found guilty of an offence against subsection (3) or (4), the court, in addition to imposing any penalty, may order the person to pay a sum specified by the court to the incorporated association as compensation.

- (6) This section –

- (a) has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to an incorporated association; and
- (b) does not prevent the commencement of civil proceedings for a contravention of a duty or in respect of a liability referred to in paragraph (a).

**Note**

Under section 1317M of the Corporations Act which is applied by section 146, civil proceedings under Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act may not be instituted against a person in respect of conduct for which the person has been convicted of an offence.

## **84 Duty of care and diligence**

- (1) An office holder of an incorporated association must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would if that person –
- (a) were an office holder of the association in the circumstances applying at the time of the exercise of the power or the discharge of the duty; and
- (b) occupied the office held by, and had the same responsibilities within the association as, the office holder.

**Note**

Under section 146, subsection (1) is declared to be an applied Corporations legislation matter in relation to the provisions of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act. The effect of that application is that subsection (1) is a civil penalty provision and a person who contravenes this provision may be ordered to pay a pecuniary penalty of up to \$20 000.

- (2) An office holder of an incorporated association who makes a business judgment is taken to meet the requirements of subsection (1), and his or her equivalent duties at common law and in equity, in respect of the business judgment if the office holder –
  - (a) makes the judgment in good faith for a proper purpose; and
  - (b) does not have a material personal interest in the subject matter of the judgment; and
  - (c) informs himself or herself about the subject matter of the judgment to the extent that he or she reasonably believes to be appropriate; and
  - (d) rationally believes that the judgment is in the best interests of the association.
- (3) For the purposes of subsection (2) –
  - (a) a *business judgment* means any decision to take or not take action in respect of a matter relevant to the operations of the incorporated association;
  - (b) an office holder's belief that a business judgment is in the best interests of the incorporated association is a rational belief unless the belief is one that no reasonable person in the position of the office holder would hold.
- (4) This section –
  - (a) has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to an incorporated association; and
  - (b) does not prevent the commencement of civil proceedings for a contravention of a duty or in respect of a liability referred to in paragraph (a).
- (5) Subsection (4) does not apply to subsections (2) and (3) to the extent to which they operate on the duties at common law and in equity that are equivalent to the requirements under subsection (1).

## 85 Duty of good faith and proper purpose

- (1) An office holder of an incorporated association must exercise his or her powers and discharge his or her duties –
  - (a) in good faith in the best interests of the association; and

(b) for a proper purpose.

**Note**

Under section 146, subsection (1) is declared to be an applied Corporations legislation matter in relation to the provisions of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act. The effect of that application is that subsection (1) is a civil penalty provision and a person who contravenes this provision may be ordered to pay a pecuniary penalty of up to \$20 000.

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(2) This section –

- (a) has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to an incorporated association; and
- (b) does not prevent the commencement of civil proceedings for a contravention of a duty or in respect of a liability referred to in paragraph (a).

**86 Reliance on information or advice**

- (1) This section applies if the reasonableness of an office holder's reliance on information or advice given to the office holder arises in a proceeding brought to determine whether the office holder has performed a duty under this Act or an equivalent common law duty.
- (2) Unless the contrary is proved, the office holder's reliance on the information or advice is taken to be reasonable if –
  - (a) the information or advice was given or prepared by –
    - (i) an employee of the incorporated association whom the office holder reasonably believed to be reliable and competent in relation to the matters concerned; or
    - (ii) a professional advisor or expert in relation to the matters that the office holder reasonably believed to be within that person's professional or expert competence; or
    - (iii) another office holder in relation to matters within the other office holder's authority; or
    - (iv) a sub-committee of the incorporated association of which the office holder was not a member in relation to matters within the sub-committee's authority; and
  - (b) the reliance was made –
    - (i) in good faith; and
    - (ii) after making an independent assessment of the information and advice, having regard to the office holder's knowledge of the incorporated association and the complexity and structure of the incorporated association.

**87 Indemnity of office holders**



An incorporated association must indemnify each of its office holders against any liability incurred in good faith by the office holder in the course of performing his or her duties as an office holder.

**APPENDIX E**

**STATUTORY RESPONSIBILITIES AND OBLIGATIONS OF OFFICE  
BEARERS IN RELATION TO THE FINANCIAL AFFAIRS OF THE  
ASSOCIATION**

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**PART 7 – FINANCIAL REPORTING**

**Division 1 – General requirements**

**89 Obligation to keep financial records**

- (1) An incorporated 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 this Part.

Penalty: 10 penalty units.

- (2) The incorporated association must retain the financial records for 7 years after the transactions covered by the records are completed.

Penalty: 10 penalty units.

**90 Tier one, tier two and tier three associations**

- (1) For the purposes of the requirements under this Part relating to the financial statements for a financial year, an incorporated association falls within one of three tiers as specified in subsections (2), (3) and (4).
- (2) A tier one association is an incorporated association –
  - (a) that has a total revenue of less than the prescribed amount or, if no amount is prescribed, less than \$250 000; or
  - (b) that the Registrar has declared under section 91(1)(a) to be a tier one association.
- (3) A tier two association is an incorporated association –
  - (a) to which neither subsection (2) or (4) applies; or
  - (b) that the Registrar has declared under section 91(1)(b) to be a tier two association.
- (4) A tier three association is an incorporated association that has a total revenue of more than the prescribed amount or, if no amount is prescribed, more than \$1 000 000.

- (5) In this section, the *total revenue* of an incorporated association means the total income of the association during the last financial year of the association from all the activities of the association.
- (6) For the purposes of subsection (5), the total income of an incorporated association is the income calculated before any expenses, including the cost to the association of goods sold by it, are deducted.

**91 Registrar may declare an incorporated association to be tier one or tier two association**

- (1) On application by an incorporated association, the Registrar may, for the purposes of a financial year, declare the association to be –
  - (a) a tier one association; or
  - (b) a tier two association.
- (2) The Registrar may make a declaration under subsection (1) only if the Registrar is satisfied that unusual and non-recurring circumstances have occurred that warrant doing so.
- (3) An application by an incorporated association to the Registrar for a declaration under subsection (1) must be made within 3 months after the end of the financial year.

**Division 2 – Tier one associations**

**92 Obligation to prepare financial statements**

- (1) As soon as practicable after the end of each financial year of the association, the committee of a tier one association must cause financial statements for that year to be prepared in accordance with subsection (2).

Penalty: 5 penalty units.

- (2) The financial statements must –
  - (a) 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; and
  - (b) deal with any matters prescribed by the regulations.

**93 Review of financial statements**

- (1) A tier one association must have its financial statements reviewed before being submitted to the annual general meeting of the association if –
  - (a) at a general meeting of the association, a majority of the members present at the meeting vote to do so; or

(b) the association is directed by the Registrar in writing to do so.

Penalty: 10 penalty units.

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- (2) If a review is required under subsection (1), the review must be conducted in accordance with section 96 except that any reference in that section to a tier two association is to be read as a reference to a tier one association.

#### **94 Submission of financial statement to annual general meeting**

- (1) At the first annual general meeting of a tier one association following a financial year of the association, the committee must submit to the members the financial statements for that financial year.
- (2) The financial statements must –
- (a) 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; and
  - (b) have attached a certificate in the prescribed form signed by two members of the committee certifying that that is the case; and
  - (c) if the association has been required under section 93(1) to have its financial statements reviewed – be accompanied by the report of that review.
- (3) At, or as soon as practicable after, the conclusion of the annual general meeting of the association, a committee member must certify, in the approved form, that –
- (a) the committee member attended the annual general meeting of the association; and
  - (b) the financial statements were submitted to the members of the association at the annual general meeting.
- (4) The committee must ensure that the minutes of the annual general meeting include a copy of –
- (a) the financial statements submitted under subsection (1); and
  - (b) the certificate referred to in subsection (2)(b); and
  - (c) if applicable – the report of the review of the financial statements referred to in subsection (2)(c).

### **Division 5 – General requirements relating to financial statements**

#### **101 Content of financial statements**

- (1) In addition to any other requirements under this Part, the financial statements of an incorporated association submitted at an annual general meeting of the association must contain particulars of the following –
- (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) for each trust of which the association was trustee during a period, being the whole or any part of its last financial year –
    - (i) the income and expenditure of the trust during that period; and
    - (ii) the assets and liabilities of the trust during that period; and
    - (iii) the mortgages, charges and securities of any description affecting any of the property of the trust at the end of that period;
  - (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.
- (2) If requested in writing to do so by one of its members, an incorporated association must permit the member at a reasonable time to inspect a copy of the trust deed of any trust referred to in subsection (1)(e).
- Penalty: 5 penalty units.

## **102 Lodgement of financial statements with Registrar**

- (1) Subject to section 103, after each financial year of the association, the secretary of an incorporated association must lodge with the Registrar in accordance with this section a copy of the financial statements of the association prepared for that year.
- Penalty: 5 penalty units.
- (2) The financial statements must be lodged with the Registrar –
- (a) within one month after the date of the annual general meeting of the association in which the financial statements were submitted to the members of the association; or

- (b) if the annual general meeting is not held within the period within which it is required under this Act to be held – within one month after the last day of that period.

**Note**

Under section 63(4), an annual general meeting of an incorporated association (other than the first annual general meeting) must be held within 5 months after the end of the previous financial year.

- (3) The financial statements must be attached to an annual statement in the approved form and be accompanied by –
  - (a) in the case of a tier two association or a tier one association to which section 93(1) applies – a copy of the report of the review of the financial statements provided in accordance with section 96(2)(b); and
  - (b) in the case of a tier three association – a copy of the auditor's report referred to in section 99(3)(b); and
  - (c) the prescribed fee (if any).
- (4) In addition, the financial statements must be accompanied by –
  - (a) a copy of the certificate referred to in section 94(3), 97(3) or 100(3) (as the case may be); and
  - (b) a statement of the terms of any resolution passed at the annual general meeting concerning the financial statements.
- (5) Subsection (4) does not apply if the financial statements are lodged within the period specified in subsection (2)(b) and before the association has held its annual general meeting.

**103 Exemption from requirement to lodge financial statements**

- (1) The secretary of an incorporated association may apply to the Registrar to be exempt from one or more of the requirements under section 102 either generally or in relation to a specified year.
- (2) The application must –
  - (a) be in writing; and
  - (b) state the reasons for the exemption; and
  - (c) be accompanied by the prescribed fee.
- (3) On receipt of the application, the Registrar may approve or refuse the exemption and must give written notification of the decision to the secretary.

**104 Extension of time to hold annual general meeting or to lodge financial statements**

- (1) The secretary of an incorporated association may apply to the Registrar to extend, or further extend, the period –
  - (a) for holding an annual general meeting of the association; or
  - (b) for lodging the financial statements of the association under section 102.
- (2) The application must –
  - (a) be in writing; and
  - (b) state the reasons for the extension; and
  - (c) be accompanied by the prescribed fee.
- (3) On receipt of the application, the Registrar may approve or refuse the extension and must give written notification of the decision to the secretary.
- (4) An application for an extension under subsection (1) may be made, and the power of the Registrar under subsection (3) may be exercised, even if the period sought to be extended has expired.

#### **105 Retention of financial statements and other documents**

- (1) An incorporated association must keep the financial statements submitted to an annual general meeting of the association for at least 7 years after the date of the annual general meeting.  
Penalty: 20 penalty units.
- (2) An incorporated association must keep the certificate referred to in section 94(3), 97(3) or 100(3) (as the case may be) for at least 7 years after the date the certificate is signed.  
Penalty: 10 penalty units.

### **Division 6 – Removal of auditor**

#### **106 Removal of auditor by resolution**

- (1) An auditor of an incorporated association may be removed from office by resolution at a general meeting of the association in accordance with this Division but not otherwise.
- (2) Written notice of an intention to move a resolution referred to in subsection (1) must be given to every member of the association at least 2 months before the general meeting is to be held.
- (3) The notice must state in full the proposed resolution.
- (4) As soon as possible after being given the notice of the resolution, the secretary of the association must –

- (a) give a copy of the notice to the auditor; and
- (b) lodge a copy of the notice with the Registrar.

Penalty: 5 penalty units.

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### **107 Auditor may make representation**

- (1) An auditor of an incorporated association who receives a notice from the association under section 106(4)(a) may, within 7 days after receiving the notice, make a written representation, not exceeding a reasonable length, to the secretary of the association.
- (2) Subject to section 108, if the auditor makes a representation under subsection (1), a resolution proposing the auditor's removal is of no effect unless –
  - (a) the secretary gives a copy of the representation to all members of the association prior to the meeting at which the resolution is to be considered; and
  - (b) the auditor is allowed to attend the meeting and address the members present prior to the vote on the resolution.
- (3) A document required to be given to a member of an incorporated association under this section may be given –
  - (a) personally; or
  - (b) by post; or
  - (c) by any other means authorised under the rules of the association.
- (4) All costs associated with giving a document to the members of an incorporated association under this section are to be borne by the association.

### **108 Exemption from requirements**

- (1) An incorporated association may apply to the Registrar for an order exempting the association from the requirements of section 107(2).
  - (2) The application must –
    - (a) be in writing; and
    - (b) state the reasons for the exemption; and
    - (c) be accompanied by the prescribed fee.
  - (3) The Registrar may make the order subject to any conditions the Registrar considers appropriate.
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## APPENDIX F

### ALTERATION OF RULES

#### 50 Alteration of rules

- (1) Subject to this Act, an incorporated association may, by special resolution, alter its rules.
- (2) An alteration of the rules of an incorporated association does not take effect unless and until the alteration is approved by the Registrar.
- (3) An application for the approval of an alteration to the rules of an incorporated association must be made by the secretary of the association in the approved form –
  - (a) within 28 days after the alteration was passed by special resolution; or
  - (b) if a longer time has been allowed by the Registrar – within the time allowed.
- (4) The application must be accompanied by –
  - (a) a copy of the notice of the special resolution setting out the particulars of the alteration; and
  - (b) a declaration signed by at least 2 members of the committee to the effect that the special resolution was passed in accordance with the Act and the rules of the association; and
  - (c) a consolidated copy of the rules that clearly shows the alteration; and
  - (d) the prescribed fee.
- (5) Subject to subsection (6), if an application for the approval of an alteration to the rules of an incorporated association is made in accordance with subsections (3) and (4), the Registrar must approve the alteration.
- (6) The Registrar must refuse an alteration to the rules of an incorporated association if the Registrar is satisfied that the alteration is contrary to this Act or the regulations.
- (7) If the Registrar approves the alteration of the rules of an incorporated association, the Registrar must give written notice of approval to the association.
- (8) If a special resolution provides for more than one alteration of the rules of an incorporated association, nothing in this section prevents the Registrar from approving one or more but not all of those alterations.

## APPENDIX G

### ACCESS TO PERSONAL INFORMATION

#### **58 Improper use of information recorded on register of members**

- (1) A person must not use information about another person obtained from the register of members of an incorporated association to contact or send materials to the other person.

Penalty: 20 penalty units.

- (2) A person must not disclose information about another person obtained from the register of members of an incorporated association knowing that the information is likely to be used to contact or send materials to the other person.

Penalty: 20 penalty units.

- (3) Subsections (1) and (2) do not apply if the use or disclosure of the information –
  - (a) is directly related to the management or the purposes of the association; and
  - (b) is not prohibited by the rules of the association.

#### **Example**

Information from the register of members may be used to give notice to members of general meetings of the association or to distribute newsletters of the association.

#### **59 Restriction of access to personal information**

- (1) A request may be made to the secretary of an incorporated association to restrict access to the personal information of a person recorded in the register of members of the association.
- (2) A request under subsection (1) may seek to restrict access so that the personal information is available only to –
  - (a) the secretary and members of the committee; or
  - (b) the secretary and members of the committee other than a specified member or specified members of the committee.
- (3) The request may be made by –
  - (a) the person; or
  - (b) if the person is a child – by a parent or guardian of the person.

- (4) If the secretary is satisfied that there are special circumstances which justify doing so, the secretary must agree to the request.
- (5) If the secretary refuses the request, the secretary must notify the person who made the request of the decision.
- (6) The notice must –
  - (a) be in writing; and
  - (b) include the reasons for the decision.
- (7) If the secretary refuses the request, the secretary must not release the personal information without the consent of the person unless –
  - (a) at least 28 days have elapsed since the secretary gave notice to the person under subsection (5); and
  - (b) either –
    - (i) the person has not sought a review of the decision; or
    - (ii) VCAT has upheld the secretary's decision to release the information.
- (8) If a person is notified by the secretary that his or her request to restrict access to personal information has been refused, the person may, within 28 days after the notification, apply to VCAT for a review of the decision.
- (9) If –
  - (a) a member of an incorporated association informs the secretary of the association that he or she wishes to circulate material to all members of the association relating to its management, activities or purposes; and
  - (b) access to the personal information of another member recorded on the register of members of the association is restricted under this section –

the secretary must forward that material to that other member.

## APPENDIX H

### DUTIES OF THE SECRETARY

#### **72 First secretary**

- (1) Subject to subsection (2), the first secretary of an incorporated association is –
  - (a) the person on whose application the association was registered as an incorporated association; or
  - (b) if the application provides for a different person – that person.
- (2) A person cannot be first secretary of an incorporated association unless the person –
  - (a) consents to being named as the first secretary; and
  - (b) is at least 18 years of age; and
  - (c) is resident in Australia.

#### **73 Filling vacancy**

- (1) Subject to subsection (2), if the office of the secretary of an incorporated association becomes vacant, the association must, within 14 days after the vacancy arises, fill the vacancy in accordance with the procedure provided in its rules.

**Note**

The period of 14 days referred to in subsection (1) applies despite any longer period provided in the rules of an incorporated association. See section 48(4).

- (2) If –

- (a) under the rules of an incorporated association, the secretary is elected or appointed otherwise than by the committee of the association; and
- (b) it is impractical for that election or appointment to occur within 14 days after the office of the secretary becomes vacant –

the committee of the association must, within 14 days after the vacancy arises, appoint a person to fill the vacancy until a person is elected or appointed in accordance with the rules of the association.

- (3) A person must not be appointed as the secretary of an incorporated association unless the person –
  - (a) consents to being appointed as secretary; and
  - (b) is at least 18 years of age; and
  - (c) is resident in Australia.

#### **74 Notice of appointment**

- (1) The secretary of an incorporated association must, within 14 days after being appointed, give written notice to the Registrar of his or her appointment.

Penalty: 5 penalty units.

- (2) The notice must be in the approved form and include the following –
  - (a) the secretary's full name and address;
  - (b) the prescribed particulars.
- (3) The notice must be accompanied by the prescribed fee (if any).
- (4) This section does not apply to the first secretary of an incorporated association referred to in section 72.

#### **75 Acts of secretary not invalid**

The acts of the secretary of an incorporated association are not invalid merely because of any defect that may be discovered in the appointment or qualification of the secretary.

#### **76 Secretary may hold other offices in association**

The secretary of an incorporated association may, unless the rules of the association provide otherwise, hold any other office in the association.