



# RULES OF INTERNET ASSOCIATION OF AUSTRALIA INC.

## PART 1 — PRELIMINARY

### 1. Terms used

In these rules, unless the contrary intention appears —

**Act** means the *Associations Incorporation Act 2015*;

**associate member** means a member with the rights referred to in rule 8(6);

**Association** means the Internet Association of Australia Inc.;

**board** means the management board of the Association;

**board meeting** means a meeting of the board;

**board member** means a member of the board;

**books**, of the Association, includes the following —

- (a) a register;
- (b) financial records, financial statements or financial reports, however compiled, recorded or stored;
- (c) a document;
- (d) any other record of information;

**by laws** means by-laws made by the Association under rule 58;

**chairperson** means the board member holding office as the chairperson of the Association;

**Commissioner** means the person for the time being designated as the Commissioner under section 153 of the Act;

**corporate member** means a member that is a body corporate, sole trader or partnership;

**financial records** includes —

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain —
  - (i) the methods by which financial statements are prepared; and
  - (ii) adjustments to be made in preparing financial statements;

**financial report**, of a tier 2 association or a tier 3 association, has the meaning given in section 63 of the Act;

**financial statements** means the financial statements in relation to the Association required under Part 5 Division 3 of the Act;

**financial year**, of the Association, has the meaning given in rule 2(2);

**general meeting**, of the Association, means a meeting of the Association that all members are entitled to receive notice of and to attend;

**member** means a person, partnership or body corporate who is an ordinary member or an associate member of the Association;

**office holder** means a person who holds a position listed in rule 21(3);

**ordinary board member** means a board member who is not elected to the position of an office holder of the Association under rule 27 or rule 32(2);

**ordinary member** means a professional member, corporate member or other member with the rights referred to in rule 8(5);

**professional member** means a member who is a person (and not a partnership, body corporate or other legal entity) who has expressed interest in the Internet Industry;

**register of members** means the register of members referred to in section 53 of the Act;

**rules** means these rules of the Association, as in force for the time being;

**secretary** means the board member holding office as the secretary of the Association;

**special general meeting** means a general meeting of the Association other than the annual general meeting;

**special resolution** means a resolution passed by the members at a general meeting in accordance with section 51 of the Act;

**subcommittee** means a subcommittee appointed by the board under rule 42(1)(a);

**tier 1 association** means an incorporated association to which section 64(1) of the Act applies;

**tier 2 association** means an incorporated association to which section 64(2) of the Act applies;

**tier 3 association** means an incorporated association to which section 64(3) of the Act applies;

## 2. Objects and financial year of the Internet Association of Australia Inc.

(1) The objects and purposes of the Association are:

- a. To promote and support the internet industry, as determined by the board;
- b. To support common interests of carriers, carriage service providers and internet service provider members, as determined by the board;
- c. To operate peering exchange services and related infrastructure, networks and services for members, as determined by the board;
- d. To act on behalf of members on any other matters as may be resolved by a general meeting.

(2) Each financial year of the Association commences on 1 July each calendar year and concludes 12 months later on 30 June the following calendar year.

## **PART 2 — ASSOCIATION TO BE NOT FOR PROFIT BODY**

### **3. Not-for-profit body**

- (1) The property and income of the Association must be applied solely towards the promotion of the objects or purposes of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any member, except in good faith in the promotion of those objects or purposes.
- (2) A payment may be made to a member out of the funds of the Association only if it is authorised under subrule (3).
- (3) A payment to a member out of the funds of the Association is authorised if it is —
  - (a) the payment in good faith to the member as reasonable remuneration for any services provided to the Association, or for goods supplied to the Association, in the ordinary course of business; or
  - (b) the payment of interest, on money borrowed by the Association from the member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or
  - (c) the payment of reasonable rent to the member for premises leased by the member to the Association; or
  - (d) the reimbursement of reasonable expenses properly incurred by the member on behalf of the Association.

## **PART 3 — MEMBERS**

### **Division 1 — Membership**

#### **4. Eligibility for membership**

- (1) Any person, partnership or body corporate who supports the objects or purposes of the Association and who meets applicable membership eligibility criteria set out in these rules and any applicable by-laws is eligible to apply to become a member.
- (2) An individual who has not reached the age of 15 years is not eligible to apply for a class of membership that confers voting rights.

#### **5. Applying for membership**

- (1) A person, partnership or body corporate who wants to become a member must apply in writing (or via an online process approved by the board) to the Association by completing and submitting an application form and Membership Agreement both in a form approved by the board.
- (2) Unless otherwise approved by the board, the application form must be completed, and the Membership Agreement must be signed or otherwise agreed by the applicant, through an online process approved by the board, before an application for membership will be deemed to have been completed by the applicant.
- (3) The applicant must specify in the application the class of membership to which the application relates and provide any other particulars specified in the application form.
- (4) The application will only be deemed submitted to the Association when it is received by the secretary by post, or it is received by the board through an online or electronic method approved by the board.

## **6. Dealing with membership applications**

- (1) The board must consider each application for membership of the Association and decide whether to accept or reject the application.
- (2) The Board may delegate the power to consider membership applications to a sub- board or other person
- (3) Subject to subrule (4), the board must consider applications in the order in which they are received by the Association.
- (4) The board may delay its consideration of an application if the board considers that any matter relating to the application needs to be clarified by the applicant or that the applicant needs to provide further information in support of the application.
- (5) The board must not accept an application unless the applicant —
  - (a) is eligible in accordance with rule 4; and
  - (b) has applied under rule 5.
- (6) The board may reject an application even if the applicant —
  - (a) is eligible in accordance with rule 4; and
  - (b) has applied under rule 5.
- (7) The board must notify the applicant of the board's decision to accept or reject the application as soon as practicable after making the decision.
- (8) If the board rejects the application, the board is not required to give the applicant its reasons for doing so.

## **7. Becoming a member**

- An applicant for membership of the Association becomes a member when —
- (a) the board accepts the application; and
  - (b) the applicant pays any membership fees payable to the Association under rule 12.

## **8. Classes of membership**

- (1) The Association consists of ordinary members and any associate members.
- (2) The Association may have any class of ordinary or associate membership approved by resolution at a general meeting or approved by a motion passed at a board meeting.
- (3) An individual who has not reached the age of 15 years is only eligible to be an associate member.
- (4) A person (or partnership or body corporate) can only belong to one class of ordinary or associate membership.
- (5) An ordinary member has voting rights and any other rights conferred on members by these rules, any by-laws or as otherwise approved by resolution at a general meeting or motion passed at a board meeting.
- (6) An associate member has the rights of ordinary members referred to in subrule (5) other than voting rights.

- (7) The number of members of any class is not limited unless a limit is approved by resolution at a general meeting.

## 9. When membership ceases

- (1) A person (or where applicable, a partnership or body corporate) ceases to be a member when any of the following takes place —
  - (a) for a member who is an individual, the individual dies;
  - (b) for a member who is a partnership, upon dissolution of the partnership;
  - (c) for a member who is a body corporate, the body corporate is wound up;
  - (d) the member resigns from the Association under rule 10;
  - (e) the member is expelled from the Association under rule 15.
- (2) The secretary must keep a record, for at least one year after a person ceases to be a member, of —
  - (a) the date on which the person (or where applicable, a partnership or body corporate) ceased to be a member; and
  - (b) the reason why the person (or where applicable, a partnership or body corporate) ceased to be a member.

## 10. Resignation

- (1) A member may resign from membership of the Association by giving written notice of the resignation to the secretary.
- (2) The resignation takes effect —
  - (a) when the secretary receives the notice; or
  - (b) if a later time is stated in the notice, at that later time.
- (3) A person (or where applicable, a partnership or body corporate) who has resigned from membership of the Association remains liable, without limitation, for any fees that are owed to the Association (the **owed amount**) at the time of resignation by that person (or where applicable, a partnership or body corporate).
- (4) The owed amount may be recovered by the Association in a court of competent jurisdiction as a debt due to the Association.

## 11. Rights not transferable

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

# Division 2 — Membership fees

## 12. Membership fees

- (1) The board must determine the entrance fee (if any) and the annual membership fee (if any) to be paid for membership of the Association.
- (2) The fees determined under subrule (1) may be different for different classes of membership.
- (3) A member must pay the annual membership fee to the Association, or another person authorised by the board to accept payments, by the date (the **due date**) determined by the board.
- (4) If a member has not paid the annual membership fee within the period of 3 months after the due date, the membership will automatically cease.

- (5) If a member who has ceased to be a member under subrule (4) offers to pay the annual membership fee after the period referred to in that subrule has expired —
  - (a) the board may, at its discretion, accept that payment; and
  - (b) if the payment is accepted, the person's membership is reinstated from the date the payment is accepted.
- (6) If a member who has ceased to be a member under subrule (4) has not been reinstated under the conditions of subrule (5) may re apply for membership as per the standard membership process.

## Division 3 — Register of members

### 13. Register of members

- (1) The secretary, or another person authorised by the board, is responsible for the requirements imposed on the Association under section 53 of the Act to maintain the register of members and record in that register any change in the membership of the Association.
- (2) In addition to the matters referred to in section 53(2) of the Act, the register of members must include the class of membership (if applicable) to which each member belongs and the date on which each member became a member.
- (3) The register of members must be kept at the secretary's place of residence, or at another place determined by the board.
- (4) A member who wishes to inspect the register of members must contact the secretary to make the necessary arrangements.
- (5) If —
  - (a) a member inspecting the register of members wishes to make a copy of, or take an extract from, the register under section 54(2) of the Act; or
  - (b) a member makes a written request under section 56(1) of the Act to be provided with a copy of the register of members,

the board may require the member to provide a statutory declaration setting out the purpose for which the copy or extract is required and declaring that the purpose is connected with the affairs of the Association, before the board permits the member to make any such copy or take or be provided with any extract or copy.

## PART 4 — DISCIPLINARY ACTION AND DISPUTES

### Division 1 — Term used

#### 14. Term used: member

In this Part —

**member**, in relation to a member who is expelled from the Association, includes former member.

## Division 2 — Disciplinary action

### 15. Suspension or expulsion

- (1) The board may decide to suspend a member's membership or to expel a member from the Association if —
  - (a) the member contravenes any of these rules; or
  - (b) the member acts detrimentally to the interests of the Association; or
  - (c) in relation to the annual membership fee payable by the member, it is not paid within 3 months of the due date; or
  - (d) any other monies due and owing to the Association by the member (whether under any agreement, by law, by order of a court or otherwise) remain unpaid after the date those monies are due for payment.
- (2) The secretary must give the member written notice of the proposed suspension or expulsion at least 28 days before the board meeting at which the proposal is to be considered by the board.
- (3) The notice given to the member must state —
  - (a) when and where the board meeting is to be held; and
  - (b) the grounds on which the proposed suspension or expulsion is based; and
  - (c) that the member, or the member's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the board about the proposed suspension or expulsion.
- (4) At the board meeting, the board must —
  - (a) give the member, or the member's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the board about the proposed suspension or expulsion; and
  - (b) give due consideration to any submissions so made; and
  - (c) decide —
    - (i) whether or not to suspend the member's membership and, if the decision is to suspend the membership, the period of suspension; or
    - (ii) whether or not to expel the member from the Association.
- (5) A decision of the board to suspend the member's membership or to expel the member from the Association takes immediate effect.
- (6) The board must give the member written notice of the board's decision, and the reasons for the decision, within 7 days after the board meeting at which the decision is made.

### 16. Consequences of suspension

- (1) During the period a member's membership is suspended, the member —
  - (a) loses any rights (including voting rights) arising as a result of membership; and
  - (b) is not entitled to a refund, rebate, relief or credit for membership fees paid, or payable, to the Association.
- (2) When a member's membership is suspended, the secretary must record in the register of members —
  - (a) that the member's membership is suspended; and
  - (b) the date on which the suspension takes effect; and
  - (c) the period of the suspension.
- (3) When the period of the suspension ends, the secretary must record in the register of members that the member's membership is no longer suspended and the date on which the suspension ended.

## Division 3 — Resolving disputes

### 17. Terms used

In this Division —

***grievance procedure*** means the procedures set out in this Division;

### 18. Application of Division

The procedure set out in this Division (the grievance procedure) only applies to disputes —

- (a) between members; or
- (b) between one or more members and the Association.

### 19. Parties to attempt to resolve dispute

- (1) The parties to a dispute must attempt to resolve the dispute between themselves within 14 days after the dispute has come to the attention of each party.
- (2) If the parties are unable to resolve the dispute in accordance with paragraph (a), either party may commence proceedings in respect of the dispute.
- (3) Nothing in these rules prevents any party to a dispute from commencing proceedings for urgent injunctive relief at any time.

## PART 5 — BOARD

### Division 1 — Powers of Board

#### 20. Board

- (1) The board members are the persons who, as the management board of the Association, have the power to manage the affairs of the Association.
- (2) Subject to the Act, these rules, the by-laws (if any) and any resolution passed at a general meeting, the board has power to do all things necessary or convenient to be done for the proper management of the affairs of the Association.

### Division 2 — Composition of Board and duties of members

#### 21. Board members

- (1) The board members consist of—
  - (a) subject to subrule (3), three people who are representatives of professional members elected by a ballot of professional members at an election administered by the board; and
  - (b) subject to subrule (3), five people who are representatives of corporate members elected by a ballot of corporate members at an election administered by the board.
- (2) The board consists of ordinary board members and office holders. The office holders will be elected pursuant to rule 26 from the ordinary board members elected to the board described in subrule (1).
- (3) The following are the office holders of the Association —
  - (a) the chairperson;
  - (b) the secretary.
- (4) A person may only be a board member if the person is —
  - (a) an individual who has reached 18 years of age;



- (b) the individual is a director, or employee of an ordinary member, or a representative of an ordinary member, nominated in writing to the secretary by the ordinary member; and
  - (c) the individual is not in the direct employment of, or directly contracted to, the Association.
- (5) A person must not hold 2 or more of the offices mentioned in subrule (3) at the same time.
- (6) A board member may only be a person and may not be a body corporate, partnership or other type of legal entity.

## 22. Chairperson

- (1) It is the duty of the chairperson to consult with the secretary regarding the business to be conducted at each board meeting and general meeting.
- (2) The chairperson has the powers and duties relating to convening and presiding at board meetings and presiding at general meetings provided for in these rules.

## 23. Secretary

The Secretary has the following duties —

- (a) dealing with the Association's correspondence;
- (b) consulting with the chairperson regarding the business to be conducted at each board meeting and general meeting;
- (c) preparing the notices required for meetings and for the business to be conducted at meetings;
- (d) unless another member is authorised by the board to do so, maintaining on behalf of the Association the register of members, and recording in the register any changes in the membership, as required under section 53(1) of the Act;
- (e) maintaining on behalf of the Association an up-to-date copy of these rules, as required under section 35(1) of the Act;
- (f) unless another member is authorised by the board to do so, maintaining on behalf of the Association a record of board members and other persons authorised to act on behalf of the Association, as required under section 58(2) of the Act;
- (g) ensuring the safe custody of the books of the Association, other than the financial records, financial statements and financial reports, as applicable to the Association;
- (h) maintaining full and accurate minutes of board meetings and general meetings;
- (i) carrying out any other duty given to the secretary under these rules or by the board.

## Division 3 — Election of board members and tenure of office

### 24. How members become Board members

A member becomes a board member if the member —

- (a) is elected to the board at an annual general meeting; or
- (b) is appointed to the board by the board to fill a casual vacancy under rule 31.

### 25. Nomination of board members

- (1) At least 42 days before an annual general meeting, the secretary must send written notice to all the members —
- (a) calling for nominations for election to the board; and

- (b) stating the date by which nominations must be received by the secretary to comply with subrule (2).
- (2) A member who wishes to nominate a person to be considered for election to the board at the annual general meeting must nominate for election by sending written notice of the nomination to the secretary at least 7 days before the annual general meeting in accordance with rule 27(6).
- (3) The written notice must include a statement by another member in support of the nomination.
- (4) A member whose nomination does not comply with this rule is not eligible for election to the board unless the nominee is nominated under rule 26 or 27(3)(b).
- (5) For the avoidance of doubt, subrule (4) does not prevent the filling of a casual vacancy under rule 31.

## **26. Election of office holders**

- (1) At the first board meeting following an annual general meeting, an election must be held for each position of office holder of the Association to be elected from the board members by a secret ballot vote administered in accordance with rule 39 and this rule 26.
- (2) If there is no nomination for a position, the chairperson of the meeting may call for nominations from the ordinary board members at the meeting.
- (3) If only one board member has nominated for an office holder position, the chairperson of the meeting must declare the board member elected to the office holder position.
- (4) If more than one board member has nominated for an office holder position, the board members at the meeting must vote in a secret ballot in accordance with procedures that have been determined by the board to decide who is to be elected to the position.
- (5) Each board member present at the meeting may vote for a board member who has nominated for an office holder position.
- (6) A board member who has nominated for an office holder position may vote for himself or herself.
- (7) Upon a board member's election to the office holder position of chairperson, the new chairperson of the Association may take over as the chairperson of the meeting.

## **27. Election of ordinary board members**

- (1) Prior to each annual general meeting, the Association must elect the ordinary board members for a three year period commencing on the date of the annual general meeting, by way of vote in accordance with rule 27(6). The Secretary shall issue a call for nominations to the Association prior to each annual general meeting in accordance with rule 25(1).
- (2) Board members are to be elected in rotational terms with three positions (two corporates, one professional) in year one, three positions (two corporates, one professional) in year two, and two positions (two corporates) in year three.
- (3) If the number of members nominating for the position of ordinary board member is not greater than the number to be elected, the chairperson of the meeting —
  - (a) must declare each of the nominees of those members to be elected to the position; and
  - (b) any remaining vacancies are filled as casual vacancies by the board as per rule 31.

(4) If —

- (a) the number of members nominating for the position of ordinary board member is greater than the number to be elected; or
- (b) the number of members nominating under subrule (3)(b) is greater than the number of positions remaining unfilled,

the ordinary members must vote in accordance with procedures that have been determined by the board to decide the members who are to be elected to the position of ordinary board member.

- (5) A member who has nominated for the position of ordinary board member may vote in accordance with that nomination.
- (6) Board members are to be elected by postal voting only, by sending votes to any email address or postal address referred to in rule 45(2)(e). The results of the voting will be announced at the annual general meeting.

## 28. Term of office

- (1) The term of office of a board member begins when the member —
  - (a) is elected at an annual general meeting or under subrule 29(3)(b); or
  - (b) is appointed to fill a casual vacancy under rule 31.
- (2) Subject to subrule (3) and rule 30, a board member holds office until the positions on the board are declared vacant at an annual general meeting.
- (3) The term of office of a board member expires at the annual general meeting three years after the board member is elected or appointed in accordance with these rules. The term of office filled by a casual vacancy expires at the next annual general meeting, prior to which, the board member may be renominated for the board.
- (4) A board member may be re-elected for a subsequent term.

## 29. Resignation and removal from office

- (1) A board member may resign from the board by written notice given to the secretary or, if the resigning member is the secretary, given to the chairperson.
- (2) The resignation takes effect —
  - (a) when the notice is received by the secretary or chairperson; or
  - (b) if a later time is stated in the notice, at the later time.
- (3) At a general meeting, the Association may by resolution —
  - (a) remove a board member from office; and
  - (b) elect a member who is eligible under rule 21(4) to fill the vacant position.
- (4) A board member who is the subject of a proposed resolution under subrule (3)(a) may make written representations (of a reasonable length) to the secretary or chairperson and may ask that the representations be provided to the members.
- (5) The secretary or chairperson may give a copy of the representations to each member or, if they are not so given, the board member may require them to be read out at the general meeting at which the resolution is to be considered.
- (6) When a board member holding a corporate seat leaves the employment of the member, or no longer meets the requirements of rule 21(4)(b), the seat will be declared vacant. The seat will be filled as a casual vacancy as per rule 31.

### 30. When membership of board ceases

A person ceases to be a board member if the person —

- (a) dies or otherwise ceases to be a member; or
- (b) resigns from the board or is removed from office under rule 29; or
- (c) holds a corporate seat and leaves the employment or support of the corporate member as per rule 29 (6)
- (d) becomes ineligible to accept an appointment or act as a board member under section 39 of the Act; or
- (e) becomes permanently unable to act as a board member because of a mental or physical disability; or
- (f) fails to attend 2 consecutive board meetings, of which the person has been given notice, except where the non-attendance is approved by motion of the board.

### 31. Filling casual vacancies

- (1) The board may appoint a person who is eligible under rule 21(4) to fill a position on the board that —
  - (a) has become vacant under rule 31; or
  - (b) was not filled by election at the most recent annual general meeting or under rule 30(3)(b).
- (2) The board will actively work to fill a vacant position within three months of the position becoming vacant, and to actively work to fill any position with more than six month remaining in the term.
- (3) If any office holder position becomes vacant, the board must use reasonable endeavours to appoint an ordinary board member who is eligible under rule 21(4) to fill the position under rule 26 within 14 days after the vacancy arises.
- (4) Subject to the requirement for a quorum under rule 38, the board may continue to act despite any vacancy in its membership.
- (5) If there are fewer board members than required for a quorum under rule 39, the board may act only for the purpose of —
  - (a) appointing board members under this rule; or
  - (b) convening a general meeting (including, but not limited to, for the purpose of calling an election of ordinary board members in order to fill a vacancy).
- (6) If a board position becomes vacant prior to the expiry date of the board position term calculated pursuant to rule 28(3) (original board position expiry date) and the board position is subsequently filled pursuant to this rule 31 prior to the expiry of the original board position expiry date, the position shall only be deemed filled pursuant to this rule 31 until the next general meeting at which time it shall automatically and immediately be deemed vacant again until filled in accordance with these rules.

### 32. Validity of acts

The acts of a board or subcommittee, or of a board member or member of a subcommittee, are valid despite any defect that may afterwards be discovered in the election, appointment or qualification of a board member or member of a subcommittee.

### 33. Payments to board members

- (1) In this rule —
  - board member** includes a member of a subcommittee;
  - board meeting** includes a meeting of a subcommittee.

- (2) A board member is entitled to be paid out of the funds of the Association for any out-of-pocket expenses for travel and accommodation properly incurred —
  - (a) in attending a board meeting; or
  - (b) in attending a general meeting; or
  - (c) otherwise in connection with the Association's business, but only where approved by a motion passed at a board meeting.

## **Division 4 — Board meetings**

### **34. Board meetings**

- (1) The board must meet at least 3 times in each year on the dates and at the times and places determined by the board.
- (2) The date, time and place of the first board meeting must be determined by the board members as soon as practicable after the annual general meeting at which the board members are elected.

### **35. Notice of board meetings**

- (1) Notice of each board meeting must be given to each board member at least 7 days prior to the meeting, except where the chairperson, or a majority of the board, considers that an urgent meeting is required; or a crisis meeting is required.
- (2) An urgent meeting may be called where the chairperson, or a majority of the board, considers an urgent meeting be required in which case only 24 hours notice may be given.
- (3) A crisis meeting may be called where the chairperson, or a majority of the board, considers a crisis meeting be required in which case only 2 hours notice may be given.
- (4) When an urgent or crisis meeting is called, the Chairperson, Association staff and/or board members will ensure all effort is made to contact all board members to attend the meeting.
- (5) The notice must state the date, time and place of the meeting and must describe the general nature of the business to be conducted at the meeting.
- (6) Unless subrule (7) applies, the only business that may be conducted at the meeting is the business described in the notice.
- (7) Urgent business that has not been described in the notice may be conducted at the meeting if the board members at the meeting unanimously agree to treat that business as urgent.

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

- (1) Subject to subrule (2), the chairperson must preside as chairperson of each board meeting.
- (2) If the chairperson is absent or unwilling to act as chairperson of a meeting, the board members at the meeting must choose one of them to act as chairperson of the meeting.
- (3) The procedure to be followed at a board meeting must be determined from time to time by the board.
- (4) The order of business at a board meeting may be determined by the board members at the meeting.

- (5) A member or other person who is not a board member may attend a board meeting if invited to do so by the board.
- (6) A person invited under subrule (5) to attend a board meeting —
  - (a) has no right to any agenda, minutes or other document circulated at the meeting; and
  - (b) must not comment at the meeting about any matter discussed at the meeting unless invited by the board to do so; and
  - (c) cannot vote on any matter that is to be decided at the meeting.

### **37. Use of technology to be present at board meetings**

- (1) The presence of a board member at a board meeting need not be by attendance in person but may be by that board member and each other board member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.
- (2) A member who participates in a board meeting as allowed under subrule (1) is taken to be present at the meeting and, if the member votes at the meeting, the member is taken to have voted in person.
- (3) Any vote at a board meeting may be facilitated by any technology approved by a motion of the board, including any online voting services or online voting tools approved by the board.

### **38. Quorum for board meetings**

- (1) Subject to rule 31(5), no business is to be conducted at a board meeting unless a quorum is present.
- (2) Subject to subrule (4), a quorum for board meetings is 50% of the number of persons constituting the board.
- (3) If a quorum is not present within 30 minutes after the notified commencement time of a board meeting the meeting is adjourned to the same time, day and place in the following week.
- (4) If —
  - (a) a quorum is not present within 30 minutes after the commencement time of a board meeting held under subrule (3); and
  - (b) at least 2 board members are present at the meeting,those members present are taken to constitute a quorum.

### **39. Voting at board meetings**

- (1) Each board member present at a board meeting has one vote on any question arising at the meeting.
- (2) A motion is carried if a majority of the board members present at the board meeting vote in favour of the motion.
- (3) If the votes are divided equally on a question, the motion shall be unsuccessful.
- (4) A vote may take place by the board members present indicating their agreement or disagreement or by a show of hands, unless these rules require or the board decides that a secret ballot or other method should be used to determine a particular question.
- (5) If a secret ballot is needed, the chairperson of the meeting must decide how the ballot is to be conducted.

- (6) The board may vote on a motion outside of a board meeting, using methods agreed to by the board. Any such motions will be recorded in the subsequent board meeting minutes.

#### 40. Minutes of board meetings

- (1) The board must ensure that minutes are taken and kept of each board meeting.
- (2) The minutes must record the following —
  - (a) the names of the board members present at the meeting;
  - (b) the name of any person attending the meeting under rule 36(5);
  - (c) the business considered at the meeting;
  - (d) any motion on which a vote is taken at the meeting and the result of the vote.
- (3) The minutes of a board meeting must be entered in the Association's minute book within 30 days after the meeting is held.
- (4) The chairperson must ensure that the minutes of a board meeting are reviewed and signed as correct by —
  - (a) the chairperson of the meeting; or
  - (b) the chairperson of the next board meeting.
- (5) When the minutes of a board meeting have been signed as correct under subrule (4) they are, until the contrary is proved, evidence that —
  - (a) the meeting to which the minutes relate was duly convened and held; and
  - (b) the matters recorded as having taken place at the meeting took place as recorded; and
  - (c) any appointment purportedly made at the meeting was validly made.

### Division 5 — Subcommittees and subsidiary offices

#### 41. Subcommittees and subsidiary offices

- (1) To help the board in the conduct of the Association's business, the board may, in writing, do either or both of the following —
  - (a) appoint one or more subcommittees;
  - (b) create one or more subsidiary offices and appoint people to those offices.
- (2) A subcommittee may consist of the number of people, whether or not members, that the board considers appropriate.
- (3) A person may be appointed to a subsidiary office whether or not the person is a member.
- (4) Subject to any directions given by the board —
  - (a) a subcommittee may meet and conduct business as it considers appropriate; and
  - (b) the holder of a subsidiary office may carry out the functions given to the holder as the holder considers appropriate.

#### 42. Delegation to subcommittees and holders of subsidiary offices

- (1) In this rule —

**non-delegable board duty** means a duty imposed on the board by the Act or another written law that cannot lawfully be delegated.

**non-delegable office holder duty** means a duty imposed on a relevant office holder by the Act or another written law that cannot lawfully be delegated.

- (2) The board may, in writing, delegate to a subcommittee or the holder of a subsidiary office the exercise of any power or the performance of any duty of the board other than —
  - (a) the power to delegate; and
  - (b) a non-delegable board duty.
- (3) In addition, an office holder may, in writing, delegate to any other board member or to any employee, agent or contractor of the Association, the exercise of any power or the performance of any duty of the office holder other than —
  - (a) the power to delegate; and
  - (b) a non-delegable office holder duty.
- (4) A power or duty, the exercise or performance of which has been delegated under this rule, must only be exercised or performed in accordance with the terms of the delegation.
- (5) A delegation made pursuant to subrule (2) may be made subject to any conditions, qualifications, limitations or exceptions that the board specifies in the document by which the delegation is made.
- (6) A delegation made pursuant to subrule (3) may be made subject to any conditions, qualifications, limitations or exceptions that the office holder specifies in the document by which the delegation is made.
- (7) A delegation made pursuant to subrule (2) does not prevent the board from exercising or performing at any time the power or duty delegated.
- (8) A delegation made pursuant to subrule (3) does not prevent the office holder that delegated under that subrule from exercising or performing at any time the power or duty delegated.
- (9) Any act or thing done by a subcommittee or by the holder of a subsidiary office under a delegation made pursuant to subrule (2) has the same force and effect as if it had been done by the board.
- (10) Any act or thing done by an employee, agent or contractor of the Association under a delegation made pursuant to subrule (3) has the same force and effect as if it had been done by the office holder that delegated under that subrule.
- (11) The board may, in writing, amend or revoke a delegation made pursuant to subrule (2).
- (12) An office holder may, in writing, amend or revoke a delegation made pursuant to subrule (3).
- (13) A delegation made pursuant to subrule (2) to a subcommittee or the holder of a subsidiary office is only effective once the delegation is accepted in writing by the applicable subcommittee or holder of subsidiary office to which the delegation is made.
- (14) A delegation made pursuant to subrule (3) to any employee, agent or contractor of the Association is only effective once the delegation is accepted in writing by the applicable employee, agent or contractor of the Association to which the delegation is made.



## PART 6 — GENERAL MEETINGS OF ASSOCIATION

### 43. Annual general meeting

- (1) The board must determine the date, time and place of the annual general meeting.
- (2) If it is proposed to hold the annual general meeting more than 6 months after the end of the Association's financial year, the secretary must apply to the Commissioner for permission under section 50(3)(b) of the Act within 4 months after the end of the financial year.
- (3) 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 if the minutes of that meeting have not yet been confirmed;
  - (b) to receive and consider —
    - (i) the board's annual report on the Association's activities during the preceding financial year; and
    - (ii) if the Association is a tier 1 association, the financial statements of the Association for the preceding financial year presented under Part 5 of the Act; and
    - (iii) if the Association is a tier 2 association or a tier 3 association, the financial report of the Association for the preceding financial year presented under Part 5 of the Act;
    - (iv) if required to be presented for consideration under Part 5 of the Act, a copy of the report of the review or auditor's report on the financial statements or financial report;
  - (c) to elect the ordinary board members;
  - (d) if applicable, to appoint or remove a reviewer or auditor of the Association in accordance with the Act;
  - (e) to confirm or vary the entrance fees, subscriptions and other amounts (if any) to be paid by members.
- (4) Any other business of which notice has been given in accordance with these rules may be conducted at the annual general meeting.

### 44. Special general meetings

- (1) The board may convene a special general meeting.
- (2) The board must convene a special general meeting if at least 20% of the members require a special general meeting to be convened.
- (3) The members requiring a special general meeting to be convened must—
  - (a) make the requirement by written notice given to the secretary; and
  - (b) state in the notice the business to be considered at the meeting; and
  - (c) each sign the notice.
- (4) The special general meeting must be convened within 28 days after notice is given under subrule (3)(a).
- (5) If the board does not convene a special general meeting within that 28 day period, the members making the requirement (or any of them) may convene the special general meeting.
- (6) A special general meeting convened by members under subrule (5) —
  - (a) must be held within 3 months after the date the original requirement was made; and
  - (b) may only consider the business stated in the notice by which the requirement was made.

#### 45. Notice of general meetings

- (1) For any general meeting of the members called by the secretary or, in the case of a special general meeting convened under rule 44(5), the members convening the general meeting, must give to each member —
  - (a) at least 30 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 the meeting is the annual general meeting, include the names of the members who have nominated for election to the board under rule 25(2); and
  - (d) if a special resolution is proposed —
    - (i) set out the wording of the proposed resolution as required by section 51(4) of the Act; and
    - (ii) state that the resolution is intended to be proposed as a special resolution; and
  - (e) specify any email address or postal address to which postal votes are to be sent; and
  - (f) attach a copy of, or a hyperlink to, rule 50; and
  - (g) if any technology is to be used at the meeting for the purposes of rule 47, set out any relevant access credentials required in order for the member to attend or vote using the technology.

#### 46. No proxy voting

- (1) A member may not appoint any proxy to vote and speak on his or her or its behalf at a general meeting.
- (2) Subrule (1) does not prevent an ordinary member that is a body corporate or partnership form exercising its rights under rule 50(2).

#### 47. Use of technology to be present at general meetings

- (1) The presence of a member at a general meeting need not be by attendance in person but may be by that member and each other member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.
- (2) A member who participates in a general meeting as allowed under subrule (1) is taken to be present at the meeting and, if the member votes at the meeting, the member is taken to have voted in person.
- (3) Any vote at a general meeting may be facilitated by any technology approved by a motion of the board, including any online voting services or online voting tools approved by the board.

#### 48. Presiding member and quorum for general meetings

- (1) The chairperson must preside as chairperson of each general meeting.
- (2) If the chairperson is absent or is unwilling to act as chairperson of a general meeting, the board members at the meeting must choose one of them to act as chairperson of the meeting.
- (3) No business is to be conducted at a general meeting unless a quorum is present. A quorum for a general meeting is 3 corporate members and 3 professional members.
- (4) If a quorum is not present within 30 minutes after the notified commencement time of a general meeting —
  - (a) in the case of a special general meeting — the meeting lapses; or

- (b) in the case of the annual general meeting — the meeting is adjourned to —
  - (i) the same time and day in the following week; and
  - (ii) the same place, unless written notice of another place is given to the members by the secretary before the day to which the meeting is adjourned.
- (5) If —
  - (a) a quorum is not present within 30 minutes after the commencement time of an annual general meeting held under subrule (4)(b); and
  - (b) at least 2 ordinary members are present at the meeting,those members present are taken to constitute a quorum.

#### **49. 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 the ordinary 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.
- (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 7 days or more, in which case notice of the meeting must be given in accordance with rule 45.

#### **50. Voting at general meeting**

- (1) On any question arising at a general meeting and on any question arising with respect to a vote referred to in rule 27(6)—
  - (a) subject to subrule (6), each ordinary member has one vote unless the member may also vote on behalf of a body corporate or partnership under subrule (2); and
  - (b) ordinary members may only vote personally unless otherwise permitted by this rule 50; and
  - (c) associate members may not vote.
- (2) An ordinary member that is a body corporate or partnership may, in writing or by completing an online form in an online system approved by the board for the purposes of this subrule (2), appoint an individual, whether or not the individual is a member, to vote on behalf of the body corporate or partnership on any question at a particular general meeting or at any general meeting, as specified in the document or online form by which the appointment is made.
- (3) A copy of the document or online form by which the appointment is made must be given to the secretary before any general meeting to which the appointment applies.
- (4) The appointment has effect until —
  - (a) the end of any general meeting to which the appointment applies; or
  - (b) the appointment is revoked by the body corporate or partnership and written notice of the revocation is given to the secretary.
- (5) Except in the case of a special resolution, a motion is carried if a majority of the ordinary members present at a general meeting vote in favour of the motion.
- (6) If votes are divided equally on a question, the motion shall be unsuccessful.

- (7) For a person to be eligible to vote at a general meeting as an ordinary member, or on behalf of an ordinary member that is a body corporate or partnership under subrule (2), the ordinary member —
  - (a) must have been an ordinary member for at least 30 days at the time notice of the meeting was given under rule 45; and
  - (b) must have paid, and the Association must have received, any fees or other monies due and owing by the member to the Association.
- (8) An ordinary member may vote at a general meeting by using any technology described in a notice issued by the secretary under rule 45.
- (9) An ordinary member may also vote at a general meeting by way of postal vote if the postal vote is:
  - (a) received by the secretary at least 24 hours prior to the general meeting at an email address or postal address set out by the secretary in a notice issued under rule 46; and
  - (b) signed by the ordinary member (or where the ordinary member is a body corporate or partnership, signed by an individual appointed to vote on behalf of the body corporate or partnership under subrule (2)).

## 51. When special resolutions are required

- (1) A special resolution is required if it is proposed at a general meeting —
  - (a) to affiliate the Association with another body; or
  - (b) to request the Commissioner to apply to the State Administrative Tribunal under section 109 of the Act for the appointment of a statutory manager.
- (2) Subrule (1) does not limit the matters in relation to which a special resolution may be proposed.

## 52. Determining whether resolution carried

- (1) In this rule —

**poll** means the process of voting in relation to a matter that is conducted in writing.
- (2) Subject to subrule (4), the chairperson of a general meeting may, on the basis of general agreement or disagreement or by 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.
- (3) If the resolution is a special resolution, the declaration under subrule (2) must identify the resolution as a special resolution.
- (4) If a poll is demanded on any question by the chairperson of the meeting or by at least 3 other ordinary members present —
  - (a) the poll must be taken at the meeting in the manner determined by the chairperson;
  - (b) the chairperson must declare the determination of the resolution on the basis of the poll.
- (5) If a poll is demanded on the election of the chairperson or on a question of an adjournment, the poll must be taken immediately.
- (6) If a poll is demanded on any other question, the poll must be taken before the close of the meeting at a time determined by the chairperson.

- (7) A declaration under subrule (2) or (4) must be entered in the minutes of the meeting, and the entry is, without proof of the voting in relation to the resolution, evidence of how the resolution was determined.

### **53. Minutes of general meeting**

- (1) The secretary, or a person authorised by the board from time to time, must take and keep minutes 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.
- (3) In addition, the minutes of each annual general meeting must record —
  - (a) the names of the ordinary members attending the meeting; and
  - (b) any postal votes received under rule 50(9); and
  - (c) the financial statements or financial report presented at the meeting, as referred to in rule 43(3)(b)(ii) or (iii); and
  - (d) any report of the review or auditor's report on the financial statements or financial report presented at the meeting, as referred to in rule 43(3)(b)(iv).
- (4) The minutes of a general meeting must be entered in the Association's minute book within 30 days after the meeting is held.
- (5) The chairperson must ensure that the minutes of a general meeting are reviewed and signed as correct by —
  - (a) the chairperson of the meeting; or
  - (b) the chairperson of the next board meeting.
- (6) When the minutes of a general meeting have been signed as correct they are, in the absence of evidence to the contrary, taken to be proof that —
  - (a) the meeting to which the minutes relate was duly convened and held; and
  - (b) the matters recorded as having taken place at the meeting took place as recorded; and
  - (c) any election or appointment purportedly made at the meeting was validly made.

## **PART 7 — FINANCIAL MATTERS**

### **54. Source of funds**

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

### **55. Control of funds**

- (1) The Association must open an account in the name of the Association with a financial institution from which all expenditure of the Association is made and into which all funds received by the Association are deposited.
- (2) Subject to any restrictions imposed at a general meeting, the board may approve expenditure on behalf of the Association.
- (3) The Association may pay remuneration to any board member for services rendered by the board member (in his or her capacity as employee or otherwise), but only pursuant to a resolution of the Association passed at a general meeting and provided that a board member

shall not receive remuneration pursuant to any such resolution if the board member is already entitled to remuneration from the Association under an employment agreement (or contract for services) between the board member and the Association.

- (4) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the Association must be signed by —
  - (a) 2 board members; or
  - (b) one board member and a person authorised by the board.
- (5) All funds of the Association must be deposited into the Association's account within 5 working days after their receipt.

## **56. Financial statements and financial reports**

- (1) For each financial year, the board must ensure that the requirements imposed on the Association under Part 5 of the Act relating to the financial statements or financial report of the Association are met.
- (2) Without limiting subrule (1), those requirements include —
  - (a) if the Association is a tier 1 association, the preparation of the financial statements; and
  - (b) if the Association is a tier 2 association or tier 3 association, the preparation of the financial report; and
  - (c) if required, the review or auditing of the financial statements or financial report, as applicable; and
  - (d) the presentation to the annual general meeting of the financial statements or financial report, as applicable; and
  - (e) if required, the presentation to the annual general meeting of the copy of the report of the review or auditor's report, as applicable, on the financial statements or financial report.

## **PART 8 — GENERAL MATTERS**

### **57. By-laws**

- (1) The Board may determine by-laws (to be known as "By-laws") covering any matters as the Board in its discretion deems appropriate, provided they are not inconsistent with this Constitution. By-laws shall be binding on all Members and may be rescinded, amended, or added to from time to time but only by resolution of the Board.
- (2) By-laws may —
  - (a) provide for the rights and obligations that apply to any classes of associate membership approved under rule 8(2); and
  - (b) impose restrictions on the board's powers, including the power to dispose of the Association's assets; and
  - (c) impose requirements relating to the financial reporting and financial accountability of the Association and the auditing of the Association's accounts; and
  - (d) provide for any other matter that these rules specify are to be dealt with in the By-laws; and
  - (e) provide for any other matter the Association considers necessary or convenient to be dealt with in the By-laws.
- (3) A By-law is of no effect to the extent that it is inconsistent with the Act, the regulations or these rules.

- (4) Without limiting subrule (3), a by-law made for the purposes of subrule (2)(c) may only impose requirements on the Association that are additional to, and do not restrict, a requirement imposed on the Association under Part 5 of the Act.
- (5) At the request of a member, the Association must make a copy of the by-laws available for inspection by the member.

## 58. Executing documents and common seal

- (1) The Association may execute a document without using a common seal if the document is signed by —
  - (a) 2 board members; or
  - (b) one board member and a person authorised by the board.
- (2) Notwithstanding subrule (1), the Association may also execute a document without using a common seal if the document is signed by 1 board member who has been given authority by the board to execute the document.
- (3) If the Association has a common seal —
  - (a) the name of the Association must appear in legible characters on the common seal; and
  - (b) a document may only be sealed with the common seal by the authority of the board and in the presence of —
    - (i) 2 board members; or
    - (ii) one board member and a person authorised by the board,and each of them is to sign the document to attest that the document was sealed in their presence.
- (4) The secretary must make a written record of each use of the common seal.
- (5) The common seal must be kept in the custody of the secretary or another board member authorised by the board.

## 59. Giving notices to members

- (1) In this rule —

**recorded means** recorded in the register of members.
- (2) A notice or other document that is to be given to a member under these rules is taken not to have been given to the member unless it is in writing and —
  - (a) delivered by hand to the recorded address of the member; or
  - (b) sent by prepaid post to the recorded postal address of the member; or
  - (c) sent by facsimile or electronic transmission to a recorded number or recorded electronic address of the member that has been specified by the member; or
  - (d) published to the Association website at <https://internet.asn.au> or such replacement website notified to members by the secretary.

## 60. Custody of books, securities and funds

- (1) Subject to subrule (2), the books and any securities of the Association must be kept in the secretary's custody or under the secretary's control.
- (2) The financial records and, as applicable, the financial statements or financial reports of the Association must be kept in the board's custody or under the board's control, or to a subcommittee or authorised person as directed by the board.

- (3) Subrules (1) and (2) have effect except as otherwise decided by the board.
- (4) The books of the Association must be retained for at least 7 years.
- (5) Any monies received at any time by any member or board member on behalf of the Association must be paid promptly into the bank account of the Association.

## 61. Record of office holders

The record of board members and other persons authorised to act on behalf of the Association that is required to be maintained under section 58(2) of the Act must be kept in the secretary's custody or under the secretary's control.

## 62. Inspection of records and documents

- (1) Subrule (2) applies to a member who wants to inspect —
  - (a) the register of members under section 54(1) of the Act; or
  - (b) the record of the names and addresses of board members, and other persons authorised to act on behalf of the Association, under section 58(3) of the Act.
- (2) The member must contact the secretary to make the necessary arrangements for the inspection.
- (3) The inspection must be free of charge.
- (4) If the member wants to inspect a document that records the minutes of a board meeting, the right to inspect that document is subject to any decision the board has made about minutes of board meetings generally, or the minutes of a specific board meeting, being available for inspection by members.
- (5) Subject to any other rule that may permit inspection of documents and records of the Association, the documents and records of the Association other than those specified in subrule (1) may only be inspected by a member where approved by a motion passed by the board at a board meeting, and only on such terms approved by the board by way of motion passed by the board at a board meeting.

## 63. Publication by board members of statements about Association business prohibited

A board member must not publish, or cause to be published, any statement about the business conducted by the Association at a general meeting or board meeting unless —

- (a) the board member has been authorised to do so at a board meeting; and
- (b) the authority given to the board member has been recorded in the minutes of the board meeting at which it was given.

## 64. Distribution of surplus property on cancellation of incorporation or winding up

- (1) In this rule —

**surplus property**, in relation to the Association, means property remaining after satisfaction of —

- (a) the debts and liabilities of the Association; and
- (b) the costs, charges and expenses of winding up or cancelling the incorporation of the Association,

but does not include books relating to the management of the Association.



- (2) On the cancellation of the incorporation or the winding up of the Association, its surplus property must be distributed as determined by special resolution by reference to the persons mentioned in section 24(1) of the Act.

### **65. Alteration of rules**

If the Association wants to alter or rescind any of these rules, or to make additional rules, the Association may do so only by special resolution and by otherwise complying with Part 3 Division 2 of the Act.