



## DECISION

*Fair Work (Registered Organisations) Act 2009*  
s.159—Alteration of other rules of organisation

### **Victorian Hospitals' Industrial Association** (R2020/168)

MURRAY FURLONG

MELBOURNE, 19 MAY 2021

*Alteration of other rules of organisation.*

[1] On 12 October 2020 the Victorian Hospitals' Industrial Association (the Association) lodged with the Fair Work Commission a notice and declaration setting out particulars of alterations to its rules. Further information in support of the application was lodged on 18 January 2021.

[2] The particulars set out alterations to Rules 2 and 34.

[3] The alteration to Rule 2 corrects an inaccuracy on the face of the rules by updating the registered address of the organisation. The Association's current address is now specified.

[4] The alterations to Rule 34 update the rules' financial management training provisions so they reflect the current provisions of the Act.

[5] It appears that in making the alterations, an aspect of the organisation's rule altering procedure was not strictly complied with. In accordance with paragraph 159(1)(c) of the *Fair Work (Registered Organisations) Act 2009* (the Act), I am required to be satisfied that the alterations have been made under the rules of the organisation.

[6] Under Rule 40, the Association's rules may be altered at a General Meeting of its members, provided notice in writing of the proposed amendments was sent to all members at least twenty-one days prior to the meeting and the resolution to alter the rules is carried by three-quarters of the members present and voting.

[7] In the present matter, the relevant notice—and a copy of the proposed alterations—was sent to members on 25 September 2020.<sup>1</sup>

[8] On 9 October 2020, a Special General Meeting of the Association unanimously voted in support of the alterations.<sup>2</sup>

[9] Insufficient notice of the alterations was given to the Association's members.

[10] In *Victorian Chamber of Commerce and Industry*,<sup>3</sup> I set out the relevant principles to be applied in circumstances where an element of the rule altering procedure contained in an organisation's rules has not been complied with:

[6] As discussed in *Master Builders' Construction and Housing Association of the Australian Capital Territory* it is necessary to consider whether the non-compliance referred is intended to result in invalidity. Does the failure to provide at least 21 days' notice mean that the alterations have not been made under the rules of the organisation— that is, does non-compliance with rule 41 invalidate the alteration of the rules?

[7] To assess this question it is necessary to consider the decision of the High Court in *Project Blue Sky* and its application by a Full Bench of this Commission in *Re: Australian Principals Federation*. In the context of the rules of registered organisations these authorities indicate that the issue is not whether an instance of non-compliance has occurred (and as an inevitable consequence the decision to alter the rules is invalidated). Instead, the issue is whether an act which does not comply strictly with the rules has no effect. To determine this, regard must be had to the language, scope and object of the relevant provisions.

[11] Applying this reasoning to the facts before me the relevant object of Rule 40 is that all members of Association should have sufficient time to consider the substance of the alterations, so they can make an informed decision about whether to amend the rules.

[12] In response to queries raised by Fair Work Commission staff, the Association submitted, among other things:

The [Association's Committee of Management] requested that the CEO convene a Special General meeting to discuss and approve the proposed Rule changes on the same day as the AGM in order to ensure that a quorum was achieved....

and

No member pointed out or commented that insufficient notice was given

[13] As noted above, no concerns were raised in relation to non-compliance with the notification period required under the rules. There is nothing else before me to suggest the Association's members, or any of them, were concerned by the amount of notice provided, or otherwise prejudiced because they received the proposal to alter the rules later than they should have. Further, the alterations are minor, technical in nature and make the rules more accurate.

[14] On the basis of the material before me, members were sufficiently cognisant of the substance of the alterations to make a considered decision at the General Meeting. In the circumstances, the fact that the alterations were received by members later than they should have been does not invalidate the decision to alter the rules. I am satisfied the alterations have been made under the rules of the organisation. I remind the Association to ensure it fully complies with its rules when transacting any future alterations.

[15] In my opinion, the alterations comply with and are not contrary to the Act, the *Fair Work Act 2009*, modern awards and enterprise agreements, and are not otherwise contrary to law. I certify accordingly under subsection 159(1) of the Act.



ACTING GENERAL MANAGER

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<sup>1</sup> See the 9 October 2020 Declaration of the Association's President, Dale Fraser, at paragraph 3(b).

<sup>2</sup> Ibid at paragraphs 3(c) and 3(e). Both dates were confirmed in a email from the Association to the Fair Work Commissions on 18 January 2021.

<sup>3</sup> [2018] FWCD 7658

## Mark Elliott

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**From:** Lisa Iacobucci <liacobucci@vhia.com.au>  
**Sent:** Monday, 18 January 2021 9:28 AM  
**To:** James Allen  
**Subject:** RE: R2020/168 - Application by Victorian Hospitals' Industrial Association

Hi James  
Hope you had a good weekend.  
I have replied to your queries below in red.  
Please let me know if you require any further information.



### Lisa Iacobucci

Support Services Manager  
Victorian Hospitals' Industrial Association

**P:** (03) 9861 4000

**E:** [liacobucci@vhia.com.au](mailto:liacobucci@vhia.com.au)

**A:** 88 Maribyrnong Street, Footscray, VIC 3011

[www.vhia.com.au](http://www.vhia.com.au)

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**From:** James Allen <James.Allen@fwc.gov.au>  
**Sent:** Thursday, 14 January 2021 1:03 PM  
**To:** Lisa Iacobucci <liacobucci@vhia.com.au>  
**Subject:** R2020/168 - Application by Victorian Hospitals' Industrial Association

OFFICIAL

Dear Lisa,

Thank you for your time on the phone earlier.

As discussed, can you please confirm the following:

- Has notice been placed on the relevant website that notification of the alterations has been given to the Commission (as per regulation 126(1)(b) of the *Fair Work (Registered Organisations) Regulations 2009*)? **Yes. The notification remains on the website pending confirmation from WRC.**
- Notice in writing of the proposed amendments shall have been sent to all members at least twenty-one (21) days prior to the meeting (Rule 40). However, the Declaration states that notice was provided to members on 25 September 2020 and the Special General Meeting was held on 9 October 2020. Can you please advise if any members pointed out that you gave insufficient notice or raised this as an issue? **No. No member pointed out or commented that insufficient notice was given**
- The Chief Executive Director called for the Special General Meeting, can you please confirm if it was requested in writing to the Chief Executive Director by the Board or five (5) per cent of the members of the Association (Rule 22(a)). **The Board at its August Board meeting requested that the CEO convene a Special General meeting to discuss and approve the proposed Rule changes on the same day as the AGM in order to ensure that a quorum was achieved. The Board minutes record this formal request by the Board.**

If you have any questions regarding the above, please feel free to contact me.

Kind Regards,

**James Allen**

Case Manager - JobKeeper Case Management Team

**Fair Work Commission**

Tel: 03 8656 4652

[james.allen@fwc.gov.au](mailto:james.allen@fwc.gov.au)

11 Exhibition Street, Melbourne Victoria 3000

GPO Box 1994, Melbourne Victoria 3001

[www.fwc.gov.au](http://www.fwc.gov.au)

The **Fair Work Commission acknowledges** that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander peoples. We acknowledge their continuing connection to country and pay our respects to their Elders past, present and emerging.



12 October 2020

Regulatory Compliance Branch  
Fair Work Commission  
11 Exhibition Street  
MELBOURNE VIC 3001

[ros@fwc.gov.au](mailto:ros@fwc.gov.au)

Dear Sir/Madam

***Change to VHIA Rules – Rule 2 Office and 34 Financial Training***

Attached please find a marked-up copy of the VHIA Rules indicating changes to Rule 2 and Rule 34, together with Explanatory Notes and the signed Declaration outlining the actions taken to make the alternation for which we now seek endorsement from the Fair Work Commission.

Please do not hesitate to contact Lisa Iacobucci on 9861 4000 or [liacobucci@vhia.com.au](mailto:liacobucci@vhia.com.au).

We look forward to your early reply.

Yours sincerely



**Stuart McCullough**  
**Chief Executive Officer**

cc. Mr M Elliott, Registered Organisations Section

**DECLARATION OF AUTHORISED OFFICER in accordance with Regulation 126 *Fair Work (Registered Organisations) Regulations 2009***

**ALTERATION OF OTHER RULES OF ORGANISATIONS in accordance with section 159 of the *Fair Work (Registered Organisations) Act 2009***

I, Dale Fraser of 88 Maribyrnong Street, Footscray, am the President of the Victorian Hospitals Industrials' Association (VHIA) and am authorised to give this notice of particulars of alterations to the rules of Victorian Hospitals Industrials' Association (VHIA) and to make this declaration as required by Regulation 126 of the *Fair Work (Registered Organisations) Regulations 2009*.

1. I declare that the alterations were made in accordance with the rules of the Victorian Hospitals Industrials' Association (VHIA).
2. The particulars of the rule alterations are attached to this declaration and labelled 'Schedule A'.
3. The actions taken under the rules to make this alteration were as follows:
  - (a) The Chief Executive Officer called for a Special General Meeting.
  - (b) The Chief Executive Officer sent notice to members on 25 September 2020 and included a copy of the proposed rule changes, which is attached to this declaration
  - (c) The Special General Meeting was held on the 9 October 2020.
  - (d) 26 members attended the Special General Meeting. Current membership is 115. As such the meeting was quorate.
  - (e) 26 voted in support.
4. I declare that the particulars set out in this notice are true and correct to the best of my knowledge and belief.

Signed:



**Dale Fraser, President**

Date: 9 October 2020

*[PLEASE NOTE: This declaration must be submitted to the Fair Work Commission within **35 days** of the changes being transacted by the organisation. It must be accompanied by the 'particulars', which are the details of the rule changes. It can be submitted to [ros@fwc.gov.au](mailto:ros@fwc.gov.au). If the organisation has a website, a notice must be put up on the website that this application has been lodged with the Fair Work Commission and this should be mentioned in the email.]*

## PROPOSED VHIA RULE CHANGES

The VHIA Board, at its meeting on Friday, 19 June 2020, approved the following proposed VHIA Rule changes and now seeks approval from the VHIA Membership:

### PROPOSED VHIA RULE CHANGES

#### RULE 2 - OFFICE

The office of the Association shall be at 2nd Floor, 150 Albert Road, South Melbourne, Victoria or at such other place as the Board may determine.

#### **Proposed Amendment**

*The office of the Association shall be at 88 Maribyrnong Street, Footscray, Victoria or at such other place as the Board may determine.*

#### RULE 34 – FINANCIAL TRAINING

All Officers whose duties include duties that relate to the financial management of the Association (Financial Duties) must undertake training:

- (a) approved by the General Manager under section 154C of the Act; and
- (b) that covers each of the Officer's Financial Duties;

within six (6) months after the Officer begins to hold Office.

#### **Proposed Amendment**

*"All Officers whose duties include Financial Duties must undertake training:*

- (a) approved by the Registered Organisations Commissioner under Section 293L of the Act; and*

- (b) that covers each of the Officer's Financial Duties;*

*within six (6) months after the Officer begins to hold Office unless they hold an exemption which may be granted by the Registered Organisations Commissioner in certain circumstances.*

**END OF PROPOSED AMENDMENTS**





**RULES OF THE  
VICTORIAN HOSPITALS' INDUSTRIAL ASSOCIATION**

**(Approved by a Special General Meeting of the VHIA Members on  
Friday, 22 July 2016)**

**Rules of the  
Victorian Hospitals' Industrial Association  
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### 3 - OBJECTS

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## **RULES OF VICTORIAN HOSPITALS' INDUSTRIAL ASSOCIATION**

### **1 - NAME OF ORGANISATION**

The Organisation shall be known as **VICTORIAN HOSPITALS' INDUSTRIAL ASSOCIATION** ("the Association").

### **2 - OFFICE**

The office of the Association shall be at ~~2nd Floor, 150 Albert Road, South Melbourne~~ 88 Maribyrnong Street, Footscray Victoria or at such other place as the Board may determine.

### **3 - OBJECTS**

The objects of the Association are:

- (a) To further and protect the interests of its members in the proper conduct of their respective institutions and organisations, hospitals, health services and community health centres.
- (b) To promote the interests of persons engaged as employers in hospitals, health services and other institutions and organisations engaged in the provision of health care in the community, hospital services, medical services, nursing services, welfare, diagnostic and treatment services and care of the aged, infirm and convalescent in Victoria.
- (c) To take such action as may be necessary or advisable to regulate and determine the rates of pay and conditions of employment of employees of members or of employees in the industry generally either under the Act or under the laws of the several States or Territories of Australia or otherwise and to advise, assist and represent members, in industrial matters.
- (d) To promote and foster the consideration and free discussion of all matters and questions affecting directly or indirectly the interests of the Association or its members.
- (e) To promote or oppose legislative and other measures affecting or likely to affect the interests of the Association or its members.
- (f) To consider, initiate and support improvements in the laws affecting the interests of the Association or its members.
- (g) To watch over and to promote depositions to Ministers of the Crown of Australia or the States of Australia or to any public body in relation to Bills presented to Parliament or action proposed to be taken or suggested affecting the interests of the Association or its members.
- (h) To federate with affiliate with or act in conjunction with similar Associations in the States of Australia and in New Zealand and to appoint representatives to any Association or Union of employers either in Australia or abroad.
- (i) To communicate with and act in conjunction with similar Associations in the other States of Australia and in New Zealand and promote measures for the advancement or protection of the interests of the Association or its members.
- (j) To enter into any amalgamation, affiliation, fusion or alliance with or co-operate or make any arrangement for the amalgamation or co-operation in whole or in part with any Association having objects altogether or in part similar to any of those of this Association or calculated to benefit the interests of the Association or its members.

### 3 - OBJECTS

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- (k) To establish or assist in the establishment of technical and statistical libraries and to provide therefor copies of Parliamentary and departmental reports official and other papers having reference to the industry and to collect, classify, tabulate and publish all information which might be calculated to interest members and the public generally in reference thereto and to permit access to the information possessed by the Association relating to the industry on such conditions as may be considered expedient .
- (l) To prosecute or defend any suits, applications and proceedings before any Court, Commission or Tribunal whatsoever as may be deemed necessary or expedient in the interests of the Association or the members thereof.
- (m) To act as arbitrators in the settlement of and to appoint Committees to deal with disputes between members or any of them and their employees.
- (n) To print and publish any newspapers, periodicals, books or leaflets that the Association may think desirable for the promotion of its objects.
- (o) To adopt such means of making known the objects of the Association as may seem expedient and in particular by advertising in the press or on buildings, erections or hoardings by circulars, pictures or posters, by purchase and exhibition of works of art or interest by publication of books and periodicals and by granting prizes, awards and donations.
- (p) To take such steps by personal or written appeals, public meetings or otherwise as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Association in the shape of donations, annual subscriptions or otherwise.
- (q) For the purposes of achieving and maintaining these objects or any of them or otherwise to have and exercise the following powers in addition to and without in any way limiting the powers conferred upon the Association by any statutory enactment or otherwise conferred or implied by law:
  - (i) To purchase, take on lease or licence or hire or otherwise acquire any real or personal property, and to re-sell lease or sublet, surrender, turn to, account or dispose of such property or any part thereof and to erect on any such land any buildings and to alter, add to and maintain any building erected upon any such land.
  - (ii) To sell, improve, maintain, manage, develop, exchange, lease, mortgage, dispose of, turn to account or otherwise deal with all or any part of the real or personal property and rights of the Association.
  - (iii) To raise and borrow money in such manner as may be thought fit and in particular upon the security of any mortgage or mortgages of all or any part of the Association's property and rights (both present and future) or by the issue of debentures charged or not upon all or any part of the Association's property and rights (both present and future) and generally with such rights and upon such terms and conditions in all respects as may be thought fit and to purchase redeem or pay off any such securities and re-issue same.
  - (iv) To give guarantee bonds and indemnities and to make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, drafts, debentures and all or any negotiable or transferable instruments.
  - (v) To invest and deal with the moneys of the Association not immediately required upon such securities or otherwise in such manner as may from time to time be determined.

## 6 - APPLICATION FOR MEMBERSHIP

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- (vi) To take or otherwise acquire and hold shares in any other Association, Organisation or Company having objects altogether or in part similar to those of this Association or carrying on any business of whatsoever nature which is deemed by the Executive of the Association to be capable of being conducted so as to further, directly or indirectly, the objects for which this Association is established or benefit the members thereof.
- (r) To do all such other things as may appear to be incidental or conducive to the attainment of these objects or any of them.
- (s) To do all things authorised by the Act.

## 4 - INDUSTRY

The Association is formed in or in connection with public hospitals and public health services industry which shall include but is not limited to the operation and management of health services, hospitals, institutions or organisations to the care for the aged, infirmed or convalescent persons or persons suffering from chronic or incurable ailments, community hospitals, community health centres and like institutions and organisations.

## 5 - MEMBERSHIP AND CONDITIONS OF ELIGIBILITY

The Association shall consist of:

- (a) Those bodies corporate which at the date of adoption of these Rules were members of the Victorian Hospitals' Association Limited and who employ or usually employ labour engaged in the public health industry.
- (b) Any body corporate which is:
  - (i) a public health service, health institution, or public health organisation established for the treatment or cure of or attention to any disease or ailment or any injury consequent upon any accident and also the maintenance and the provision of medical, surgical and/or dental attention, medicines, surgical appliances, and nursing of any patient or a health service, public health institution, or public health organisation to care for the aged, infirm or convalescent persons or persons suffering from chronic or incurable ailments or a health service, public health institution, or public health organisation which in the opinion of the Board is suitable for admission to membership of the Association; and
  - (ii) is governed and controlled by a committee acting in an honorary capacity, or by a religious body, which is supported by aid from the State of Victoria pursuant to the provisions of the Health Services Act 1988 (Vic); or
  - (iii) is governed and controlled by a board remunerated by directors fees which is supported by aid from the State of Victoria pursuant to the provisions of the Health Services Act 1988 (Vic).admitted as a member as hereinafter provided.
- (c) Any person whether an employer in the industry or not who is an officer of the Association and has been admitted as a member thereof.

## 6 - APPLICATION FOR MEMBERSHIP

- (a) Membership of the Association shall be divided into the following Divisions:

## 7 - SUBSCRIPTIONS AND LEVIES

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- Division 1 - Metropolitan Health Services or their equivalent (Public)
- Division 2 - Base and Regional Hospitals or their equivalent (Public)
- Division 3 - District Hospitals or their equivalent (Public)
- Division 4 - Community Health Centres (Public)

- (b) Every application for membership shall be made to the Chief Executive Officer in writing at the office of the Association and shall contain the correct name and address of the applicant and shall be signed by the applicant or in the case of a body corporate be sealed with the seal and shall be in a form approved from time to time by the Board.
- (c) The applicant shall nominate in the application:
  - (i) two (2) representatives pursuant to Rule 15;
  - (ii) the number of employees on the applicant's payroll and such other information as the Board may require; and
  - (iii) the Division to which the applicant wishes to belong.
- (d) Upon receipt of an application for membership the Chief Executive Officer shall inform the applicant in writing of:
  - (i) the financial obligations arising from membership; and
  - (ii) the circumstances, and the manner, in which a member may resign from the Association.
- (e) Subject to section 166 of the Act the Chief Executive Officer shall submit all applications to a meeting of the Board and by majority vote may either elect an applicant to membership or refuse or defer any application. The Board may require an applicant to furnish further particulars in support of an application.
- (f) If an applicant is elected to membership, written notice signed by the Chief Executive Officer shall be forwarded to the applicant advising of the fact of election, and giving notice that, on payment by the applicant of the relevant subscription the applicant shall thereupon become a member of the Association.
- (g) The Board shall have power to allocate members to a particular Division and may at the request of a member and upon payment of an annual fee determined by the Board from time to time allocate that member to more than one Division. The Board may also transfer a member from one Division to another Division.
- (h) If an applicant is refused election to membership, written notice signed by the Chief Executive Officer shall be forwarded to the applicant advising of, such refusal and informing that the applicant may by notice in writing addressed to the Chief Executive Officer at the office of the Association within thirty (30) days of notice of such refusal appeal to the Board which may confirm or vary its decision to refuse election to membership. If such decision is confirmed, the applicant may give notice in writing to the Chief Executive Officer within thirty (30) days of appeal to the next Annual General Meeting of members and such meeting may accept or refuse the application. The applicant shall be informed of the result of any such appeal by notice in writing signed by the Chief Executive Officer.

## 7 - SUBSCRIPTIONS AND LEVIES

- (a) The annual subscription payable by members of each Division shall be determined from time to time by the Board.

## 8 - TERMINATION OF MEMBERSHIP

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- (b) Subject to sub-rule 7(c), a member's first annual subscription shall be payable on admission to membership and future annual subscriptions shall be payable in advance at yearly intervals thereafter.
- (c) The first annual subscription of those bodies corporate which at the date of adoption of these Rules were admitted as members pursuant to sub-rule 5(a) shall not be payable until one (1) month after the date of registration of the Association as an organisation of employers under the Act.
- (d) The Board may determine from time to time the amount of any levy payable by the members or any class of member for the purposes of the Association within thirty (30) days of demand or such other time as may be specified by the Board.

### 8 - TERMINATION OF MEMBERSHIP

- (a)
  - (i) A member may resign from membership of the Association by written notice addressed and delivered to the Chief Executive Officer. Such notice shall be taken to have been received by the Association when delivered to the Chief Executive Officer.
  - (ii) A notice of resignation that has been received by the Association is not invalid because it was not addressed and delivered to the Chief Executive Officer.
  - (iii) A resignation from membership of the Association is valid even if it is not effected in accordance with paragraph 8(a)(i) if the member is informed in writing by or on behalf of the Association that the resignation has been accepted.
- (b) A notice of resignation from membership of the Association takes effect:
  - (i) where the member ceases to be eligible to become a member of the Association:
    - (1) on the day on which the notice is received by the Association; or
    - (2) on the day specified in the notice, which is a day not earlier than the day when the member ceases to be eligible to become a member;whichever is later; or
  - (ii) in any other case:
    - (1) at the expiration of two (2) weeks after the notice is received by the Association; or
    - (2) on the day specified in the notice;whichever is later.
- (c) If a member ceases to be engaged in or as an employer in the industry the membership of such member may be determined summarily by resolution of the Board, provided however that such determination shall not affect the liability of the member to pay all monies owing by the member to the Association.
- (d) Any annual subscription payable but not paid by a former member of the Association, in relation to a period before the member's resignation or termination from the Association took effect, may be sued for and recovered in the name of the Association in a court of competent jurisdiction, as a debt due to the Association.

## 10 - CHANGE OF BUSINESS

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- (e) Any member who has not paid any subscription within three (3) months from the date on which such subscription became due or payable shall be disqualified from taking part in any proceedings of the Association and may be struck off the roll of membership by order of the Board in accordance with sub-rule 8(f).
- (f)
  - (i) If a member becomes unfinancial in accordance with sub-rule 8(e), his/her name may be struck off the Register of Members by order of the Board. Any member shall cease to be a member of the Association as soon as his/her name shall have been struck off the Register of Members by order of the Board and not sooner.
  - (ii) Provided that where a member has become unfinancial and at least twenty-eight (28) days before the Board orders that the member be struck off the Register of Members, the Chief Executive Officer shall advise the member, in writing, that if he/she fails to pay the outstanding subscriptions and is unable within fourteen (14) days to show cause why they are unfinancial then within fourteen (14) days of the date of the letter then he/she will be struck off the Register of Members without further notice. If the member pays the outstanding subscriptions within that time then he/she shall not be struck off the Register of Members.
- (g) Any member who shall be expelled from the Association under the provisions of Rule 39 shall thereupon cease to be a member.
- (h) Members ceasing to be such from any cause whatsoever shall have no claim of any kind monetary or otherwise on the Association or its assets.

## 9 - REGISTER OF MEMBERS

- (a) Subject to directions given by the Executive and/or the Board in accordance with sub-rule 26(b), the Chief Executive Officer shall keep or cause to be kept a register of members arranged as required by the Act, in which shall be recorded the following information:
  - (i) The name of each member and nominated representative thereof.
  - (ii) The postal address of each member.
  - (iii) The Division to which the member is allocated.
  - (iv) The number of employees of the member on admission to membership.
  - (v) The date of election by the Board to membership.
  - (vi) Such other details as may be required by the Board from time to time .
- (b) The accounting officer shall lodge in the Commission prior to the 31st day of March each year a statutory declaration certifying that the register has been kept and maintained.
- (c) An entry of the name of a member in the register shall be as between the Association and the member prima facie evidence of membership of the Association.

## 10 - CHANGE OF BUSINESS

- (a) A member shall notify the Association of the following within fourteen (14) days of the assignment, transfer or succession where:



### 13 - POWERS AND DUTIES OF THE BOARD

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- (i) the business, or part of the business, of a member is assigned or transferred to a person who is not a member of the Association; or
- (ii) such a person succeeds to the business, or part of the business, of a member of the Association.
- (b) The Board will consider the ongoing membership of such a member and notify the organisation within 28 days of its considerations.

### 11 - MANAGEMENT

- (a) The management of the Association shall be vested in the Board:
- (b) The Board shall consist of members elected by and from the members of each Division of the Association, (two (2) of whom shall be the President and Deputy President) elected under Rule 16 and shall hold office in accordance with the Rules.

### 12 - DUTIES OF PRESIDENT, DEPUTY PRESIDENT AND MEMBERS OF THE BOARD

- (a)
  - (i) The President in all official relations of the Association shall take precedence over all other members. He/she shall be entitled to preside when present at any meeting of the Board or other Committee. He/she shall be ex-officio a member of all Committees.
  - (ii) The President shall perform all duties and functions required of him/her by these Rules.
- (b)
  - (i) The Deputy President shall be the accounting officer of the Association as prescribed by the Regulations and shall perform all duties and functions required of him/her by these Rules.
  - (ii) He/she shall keep all records and sign lodge file with and furnish to the General Manager all documents required by the Act or Regulations to be kept, signed lodged and filed by the accounting officer of the Association.
  - (iii) In the absence of the President from any meeting of the Board or other Committee of which the Deputy President is a member, or if at any meeting of a Committee the President although present does not desire to preside the Deputy President shall preside, but should neither of the President or Deputy President be present then the meeting shall elect a chairperson for the time being.
- (c) Members of the Board shall:
  - (i) attend all meetings of the Association and the Board:
  - (ii) have the powers duties and obligations prescribed by these Rules and the Act; and
  - (iii) exercise such authority as may be delegated to them by the Board or a General Meeting under these Rules.

### 13 - POWERS AND DUTIES OF THE BOARD

Subject to these Rules and to any resolution of a General or Special Meeting of Members, the Board shall have the following powers:

- (a) To determine matters of policy concerning the affairs of the Association.
- (b) To repeal, alter or add to any Rule to enable the Association to comply with the provisions of the Act or the Regulations thereunder or to comply with the requirements of the General Manager.

### 13 - POWERS AND DUTIES OF THE BOARD

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- (c) To hear and determine any charge made against a member.
- (d) To appoint from time to time a Returning Officer, not being the holder of any other office and not being an employee of the Association, to conduct all elections to be held in accordance with these Rules and to terminate any such appointment. No Returning Officer shall be a candidate for any office the election for the filling of which he/she would conduct.
- (e) To direct the policy of the Association in all matters affecting the interests of members.
- (f) To establish Committees to investigate and report to the Board on any matter of policy affecting the Association or its members.
- (g) From time to time to make such By-laws and regulations and issue such Orders consistent with the Rules for the time being of the Association as shall appear to it conducive to the good management and effective working of the Association and all such By-laws, regulations and Orders shall be proposed to the members of the Association at the next Annual General Meeting after making thereof and may be repealed or altered by such meeting but all such By-laws, regulations and Orders shall come in to force immediately they are made and shall be binding on all members and officers of the Association.
- (h) To exercise powers specifically conferred on the Board by these Rules.
- (i) To deal with matters referred to it by the Executive or by any General Meeting of the Association.
- (j) To delegate any of its powers to a Committee or Committees consisting of members of the Board.
- (k) To refer matters to any Committee or Committees consisting of members of the Association or other persons eligible under Rule 15 save however that no such Committee or Committees shall have the power to exercise any of the powers of the Board. Any decision, recommendation advice or report of any Committee constituted under this sub-rule shall be void and of no affect unless same has been referred to and ratified by a duly constituted meeting of the Board.
- (l) To hear and determine any appeal by a member under sub-rule 39(f).
- (m) To appoint and dismiss such staff of the Association, including a Chief Executive Officer, as the Board considers necessary for the satisfactory discharge of the business of the Association, and to determine remuneration and conditions of employment in relation thereto.
- (n) To receive accounts duly and authorise their payment or otherwise.
- (o) To prepare and adopt at the commencement of each year a budget of anticipated revenue and expenditure for the forthcoming year and to review and where necessary amend such budget at the commencement of each succeeding quarter of such year in the light of a report to be presented by the Chief Executive Officer indicating the variation from the budget during the preceding quarter.
- (p) To ensure that satisfactory procedures are followed by the Association so that the funds of the Association are subjected to adequate control and satisfy the requirements of the Act and the Regulations and, inter alia, regularly review the expenditure of the Association making recommendations for payment or otherwise of such expenditure.

## 16 - ELECTION OF THE BOARD

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- (q) To initiate, examine, alter, amend or otherwise deal with such projects and expenditure as will promote the objects of the Association and to adopt such measures as it from time to time deems expedient for the purpose of giving effect to those objects or any of them.
- (r) To lodge any document referred to in Rule 43.
- (s) To act on behalf of the Association in all matters relative to bankrupts and insolvents, assignments for the benefit of creditors or liquidators.
- (t) To purchase, take on lease or licence or otherwise acquire, hold, sell lease, mortgage, exchange or otherwise own, possess or deal with any real or personal property and renovate, alter, improve or erect buildings on any property with the moneys of the Association and to let, hire, lease or sell such property including power to mortgage, charge or encumber same for the purposes of the Association.
- (u) To determine who shall be appointed or removed from office as a Director or Directors of any company in respect of which the power of appointment or removal of Directors is vested in the Association.

## 14 - REPRESENTATIVES

- (a) A member of the Association which is a body corporate may by notice in writing to the Chief Executive Officer under the hand of the Chief Executive, a Director or Chief Executive Officer of the member from time to time, be entitled to nominate two representatives who may attend on behalf of such member in meetings and proceedings of the Association and may by like notice from time to time remove any such representatives and appoint others in their place or in the place of a representative who had died or resigned.
- (b) The representatives shall have all the privileges of a member under these Rules except for the following:
  - (i) the power of appointing a representative under this present Rule; and
  - (ii) only one of the two representatives that each member of the Association is entitled to appoint in accordance with paragraph (a) shall be entitled to exercise votes on behalf of that member at any General or Special Meeting of members. In the event of a dispute as to which representative shall exercise votes on behalf of a member, the ruling of the chairperson present at the General or Special Meeting of members will be final.

## 15 - ELIGIBILITY FOR OFFICE

Any Chief Executive of a member, a member of the Executive Staff of the member or a member of the Board of Management of a member, or one of the representatives of a member appointed in accordance with Rule 14 shall (subject to the provisions for nomination, Rule 20 and the provisions of the Act) be eligible to hold office as President, Deputy President, Member of the Board or other Committee established thereunder.

## 16 - ELECTION OF THE BOARD

- (a) To encourage the participation of members of each Division in the affairs of the Association, members of each Division shall be entitled to elect to the Board the following number of representatives:

Division 1 - 7  
Division 2 - 3  
Division 3 - 3

## 16 - ELECTION OF THE BOARD

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### Division 4 - 1

- (b) Subject to any early vacation of office or other applicable Rules, members of the Board shall be elected prior to the Annual general Meeting of the Association on the following basis:
- (i) In each even calendar year:
    - A. Division 1 - 4 members
    - B. Division 2 - 2 members
    - C. Division 2 – 1 member
    - D. Division 4 – 1 member
  - (ii) In each odd calendar year:
    - A. Division 1 – 3 members
    - B. Division 2 – 1 member
    - C. Division 3 – 2 members
    - D. Division 4 – 0 members
- (c) At least forty-two (42) days prior to the Annual General Meeting of the Association the Returning Officer shall cause a notice to be given to each member calling for nominations for the Board. Such notice shall advise each member of the closing date for nominations.
- (d) Any member who has lodged at the office of the Association at least thirty-five (35) days before the date of the Annual General Meeting a notice of his/her candidature signed by him/her and two other members who belong to the same Division of the Association as himself/herself shall be eligible for election.
- (e) (i) If only the required number of nominations to fill the vacancies on the Board have been received by the Returning Officer he/she shall at the time nominations close inspect the nominations of candidates and satisfy himself/herself so far as he/she reasonably can that such nominations are regular and valid. Should the Returning Officer find any nomination to be defective he/she shall before rejecting same, notify the person of the defect, and, where it is practicable to do so, shall give the person concerned the opportunity of remedying the defect within a period of not less than seven (7) days after receipt by that person of notice of the defect. Upon being satisfied that the nominations are regular and valid the Returning Officer shall forthwith declare the person or persons so nominated elected unopposed to the position for which he/she was so nominated.
- (ii) If more than the number of nominations required to fill any office are received an election shall be taken by a secret ballot which shall consist of a postal ballot of financial members as hereinafter provided. The Returning Officer shall:
- (1) Inspect the nomination of candidates and satisfy himself/herself so far as he/she reasonably can that such nominations are regular and valid. If he/she finds any nomination to be defective he/she shall, before rejecting the same, notify the person concerned of the defect and where it is practicable to do so give that person the opportunity of remedying the defect within a period of not less than seven (7) days after receipt by the person of notice of the defect.

## 16 - ELECTION OF THE BOARD

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- (2) Permit any duly nominated candidate to appoint by notice in writing over his/her signature any member of the Association his/her scrutineer to represent him/her at the election.
  - (3) Prepare or cause to be prepared such number of ballot papers as there are members upon which ballot papers the names of the duly nominated candidates shall appear in alphabetical order. One ballot paper may contain provision for voting in respect of more than one election.
  - (4) After seven (7) days of the close of nominations forward by prepaid post to each financial member of the Association one (1) ballot paper which the Returning Officer shall have previously initialled for each such election together with a declaration envelope and supply therewith to each such member a pre paid envelope addressed to the Returning Officer at the address arranged by him/her for the return of ballot papers as provided in paragraph (e)(ii)(6) being an envelope that may be posted without expense to the voter.
  - (5) With such ballot papers the Returning Officer shall forward to each member a notification:
    - (a) Of the closing date for the receipt of returned ballot papers which shall be not later than fourteen (14) days after the date of closing of nominations;
    - (b) That the voting is to be conducted by striking out the name of each candidate for whom the member does not desire to vote.
    - (c) Any member who will be absent from his/her usual address may lodge a request with the Returning Officer for a ballot paper to be sent to an address specified.
  - (6) Hire or otherwise arrange for a post office box or other post office receptacle to which ballot papers may be forwarded to him/her and arrange as far as possible that such box or receptacle shall not be available to be opened nor be opened by any person other than himself/herself.
  - (7) After the closing date the Returning Officer shall collect the prepaid envelopes and declaration envelopes containing the ballot papers and check the same to ensure that no votes are cast except by members entitled to cast and shall then open the declaration envelopes containing the ballot papers. He/she shall then mix the ballot papers so that they are not able to be identified.
  - (8) Admit the ballot papers properly marked and count the votes thereon indicated.
  - (9) In the case of a tie between candidates, draw lots.
  - (10) Immediately following the conclusion of the count declare the names of the persons elected and advise the Chief Executive Officer by letter the names of the persons declared by him/her to be elected.
- (f) No member shall mark a ballot paper or the declaration envelope otherwise than in a manner determined by the Returning Officer.
- (g) The roll of voters for any ballot shall close seven days before the day on which nominations for the election open.
- (h) Any reference in these rules to a declaration envelope and a pre paid envelope shall be taken as a reference to a declaration envelope and a prepaid envelope in the form prescribed by the Regulations.

## 17 - ELECTION OF OFFICE BEARERS

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- (i) For the purposes of this Rule:
  - (i) Annual General Meeting shall include the First General Meeting;
  - (ii) Member shall include any person eligible for Office under Rule 15.

### 17 - ELECTION OF OFFICE BEARERS

- (a) The positions of President and Deputy President (Office Bearers) shall be elected annually by and from members of the Board in the manner hereinafter prescribed at a meeting of that Board to be held after the completion of the first election or annual election of members of the Board on the day of or immediately prior to the Annual General Meeting.
- (b)
  - (i) Following the annual election of the members of the Board the Returning Officer shall call for nominations from the members of the Board then elected at least fourteen (14) days before the Annual General Meeting for the respective offices of President and Deputy President.
  - (ii) Any member of the Board may lodge within the Association at least nine (9) days before the Annual General Meeting a nomination in writing of a member of the Board for any such office and the candidate shall also sign the nomination. Any member of the Board so nominated shall be eligible for election.
  - (iii) After the close of nominations, the Returning Officer shall in writing advise all members of the Board the candidates for election and if an election is required, advise members of the Board who are entitled to vote in the election that if they will not be present at the meeting, referred to in sub-rule 17(a), they may cast an absent vote under sub-rule 17(e).
- (c) If only the required number of nominations to fill any office or offices are received by the Returning Officer at the close of nominations the Returning Officer shall inspect the nominations of candidates and satisfy himself so far as he/she reasonably can that such nominations are regular and valid. Should the Returning Officer find any nomination to be defective he/she shall before rejecting same, notify the person concerned of the defect, and, where it is practicable to do so, shall give that person the opportunity of remedying the defect within a period of not less than seven (7) days of receipt of notice. Upon being satisfied that the nominations are regular and valid the Returning Officer shall forthwith declare the person or persons so nominated elected unopposed to the position for which he/she was so nominated.
- (d) If more than the number of nominations required to fill any office is received an election shall be taken by a secret ballot of all Board members as hereinafter provided. The Returning Officer shall:
  - (i) Inspect the nominations of candidates and satisfy himself so far as he/she reasonably can that such nominations are regular and valid. If he/she finds any nomination to be defective he/she shall, before rejecting the same, notify the person concerned of the defect, and, where it is practicable to do so give that person the opportunity of remedying the defect within a period of not less than seven (7) days of receipt of his/her notice.
  - (ii) Permit any duly nominated candidate to appoint by notice in writing over his/her signature any member or representative of any member of the Association his/her scrutineer to represent him/her at the election.

## 18 - SCRUTINEERS

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- (iii) Prepare or cause to be prepared such number of ballot papers as there are members entitled to vote upon which ballot papers the names of the duly nominated candidates shall appear in alphabetical order. One ballot paper may contain provision for voting in respect of more than one election.
  - (iv) Supply to each member entitled to vote one (1) ballot paper which the Returning Officer shall have previously initialled.
  - (v) Direct each voting member to strike out on the ballot paper the name of each candidate for whom he/she does not desire to vote and thereafter to so fold the ballot paper so that the marking thereon is not visible until unfolded.
  - (vi) Collect the folded ballot papers and ensure that no person returns more ballot papers than he/she has votes.
  - (vii) Admit ballot papers properly marked and count the votes thereon indicated.
  - (viii) At the conclusion of the count declare to the meeting the candidate or candidates as the case may be receiving the majority of votes elected.
  - (ix) In the case of a tie between candidates draw lots.
- (e) Any member who will not be present at the meeting at which the ballot is to be held may lodge a request with the Returning Officer for a ballot paper. Absent votes are required to be lodged prior to the commencement of the meeting.

## 18 - SCRUTINEERS

- (a) All scrutineers shall so far as possible, having regard to the time of their appointment in the case of a postal ballot be entitled to observe the posting of nomination forms and the consideration thereof on return and in the case of all elections be entitled to inspect the nomination forms and observe the form and distribution of ballot papers, the collection of ballot papers on their return, the checking of votes, the admission and counting of votes, the conduct of the determination of the election by lot and the declaration of the ballot.
- (b) In every case it shall be the right and the duty of the scrutineer to observe any act performed or directed by the Returning Officer which may effect the result of the election and the Returning Officer shall take all reasonable steps by notification or otherwise to enable each scrutineer to exercise this right, but no election shall be invalidated by reason of the fact that a scrutineer does not, in fact, exercise all or any of such rights if he/she has had a reasonable opportunity to do so.
- (c) A scrutineer shall direct the attention of the Returning Officer to any irregularity he/she may detect whether in the nomination forms, the form of distribution of ballot papers, the admission of the right of any person to vote, the admission or counting of ballot papers or in respect of any other matter to be observed or done under these Rules in connection with elections.
- (d) A scrutineer shall do all things necessary so that the conduct of an election shall conform to these Rules and so that the secrecy of the ballot shall be observed.

**19 - TERM OF OFFICE**

- (a) The President and Deputy President shall commence their term of office on the day or immediately prior to the Annual General Meeting following their election and continue in office until the declaration of elections of their successors prior to the next Annual General Meeting whether or not they remain members of the Board.
- (b) Members of the Board elected prior to each Annual General Meeting after the First Annual General Meeting shall hold office subject to these Rules until the election of their successors prior to the Annual General Meeting in the second year after their election, any member so retiring shall be eligible for re-election.

**20 - CASUAL VACANCIES**

- (a) Any casual vacancy in the office of member of the Board shall be filled by an election conducted in the following manner and the person so elected shall hold office until the expiration of the term of office of the member of the Board to whose place he/she was elected and shall be eligible for re-election:
  - (i) Where the unexpired portion of the vacated office is less than three quarters of the term of office prescribed for Board members or twelve (12) months whichever is the greater:
    - (1) The Returning Officer shall call for nominations for the position rendered vacant in the notice calling for the next meeting of the Board following the creation of such vacancy or any member of the Board may in writing nominate any person being qualified under Rule 15 hereof for the position vacated and the candidate for such position shall also sign the said nomination, provided that the only persons who may be nominated for the position vacated are persons who belong to the same Division as that member of the Board in respect of whom the casual vacancy is to be filled.
    - (2) If only the required number of nominations to fill the vacated positions are received, the Returning Officer shall inspect the nominations of candidates and satisfy himself/herself so far as he/she reasonably can that such nominations are regular and valid. Should the Returning Officer find any nomination to be defective he/she shall before rejecting same, notify the person concerned of the defect, and, where it is practicable to do so, shall give that person the opportunity of remedying the defect within a period of not less than seven (7) days of receipt of notice. Upon being satisfied that the nominations are regular and valid the Returning Officer shall forthwith declare the person or persons so nominated, elected unopposed to the position to which he/she was so nominated.
    - (3) If more than the number of nominations required to fill any vacated position are received, an election shall be taken by secret ballot of all members of the Board.
  - (ii) Where the unexpired portion of the vacated office is greater than three quarters of the term of office prescribed for Board members or twelve months whichever is the greater:
    - (1) The Returning Officer shall cause a notice to be given to each member of the Division of the Association to which the vacancy relates calling for nominations for the position vacated. Such notice shall contain the names of the persons nominated by the existing Board as candidates for membership of the Board and shall advise such members of the closing date for nominations.



## 22 - MEETINGS OF MEMBERS

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- (2) In addition to the persons nominated by the existing Board for election as members of the Board any member who has lodged at the office of the Association prior to the closing date for nominations a notice of his/her candidature endorsed by the member of which he/she belongs and two (2) other members who belong to the same Division of the Association as himself/herself shall also be eligible for election.
- (3) If only the required number of nominations to fill the vacancies on the Board have been received by the Returning Officer at the time nominations close, sub-rule 16(e)(i) shall mutatis mutandis apply.
- (4) If more than the number of nominations required to fill any office are received a postal ballot shall be held so as to be completed within thirty (30) days of the closing date for nominations and sub-rule 16(e)(ii) shall mutatis mutandis apply to such ballot.

## 21 - VACATION OF OFFICE

The office of President, Deputy President or member of the Board or other Committee shall ipso facto be vacated:

- (a) If he/she ceases to be a member of the Association or a representative of a member or person eligible under Rule 14 or Rule 15; or
- (b) If he/she retires from office; or
- (c) If by a resolution passed by two-thirds majority of members present and voting at a Special General Meeting called for that purpose under sub- rule 22(b) he/she is found guilty of misappropriation of the funds of the Association or a substantial breach of these Rules or of gross misbehaviour or gross neglect of duty.

## 22 - MEETINGS OF MEMBERS

- (a) The Annual General Meeting of the Association shall be held not later than twelve (12) months after the First General Meeting and thereafter the Annual General Meeting shall be held in the month of October each year on such day as the Board may direct at which meeting a report and balance sheet duly audited shall be submitted and for the transaction of any other business of which due notice shall have been given. General Meeting may also be held at such other times as the Board may direct.
- (b) Special General Meetings of the Association shall be held from time to time as may be requested in writing to the Chief Executive Officer by the Board or five (5) per cent of the members of the Association and in the case of any Special General Meeting a notification of the purpose for which such meeting is called shall be given.
- (c) At least seven (7) days' clear written notice shall be given to each member of each meeting at which he/she is entitled to attend specifying the place, the day and the hour of the meeting and the business to be transacted thereat.
- (d) Notices of meeting shall be forwarded by or on behalf of the Chief Executive Officer and shall be served upon all members entitled to attend, either personally or by post to the member's address appearing upon the register.

## 22 - MEETINGS OF MEMBERS

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- (e) The accidental omission to give notice of the meeting to or the non- receipt of notice of the meeting by any member shall not invalidate the proceedings at any meeting.
- (f) No business shall be transacted at any meeting unless a quorum of members is present at the time when the meeting proceeds to business, except as herein otherwise provided. Fifteen (15) members shall form a quorum.
- (g) If within fifteen (15) minutes from the time appointed for the meeting a quorum is not present, the meeting if convened upon the requisition of members, shall be dissolved. In any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place and if at the adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the members present shall form a quorum.
- (h) The President, or in his/her absence, the Deputy President shall preside at the First General Meeting and all Annual and Special General Meetings of the Association. If at any such meeting the President or Deputy President is not present within fifteen (15) minutes after the time appointed for holding the meeting, or is unwilling to preside, the members present shall choose one of their number to preside.
- (i) At any meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the results of the show of hands) demanded by at least three (3) members, and unless a poll is so demanded a declaration by the chairperson that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book of proceedings of the Association shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (j) If a poll is duly demanded, it shall be taken in such manner as the chairperson directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The admissibility of any vote may be determined by the chairperson.
- (k) In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded in addition to any substantive role to which he/she may be entitled shall be entitled to a second or casting vote.
- (l) A poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time during the meeting as the chairperson of the meeting directs.
- (m) On a show of hands or on a poll:
  - (i) every member present in person or by his/her duly appointed representative as herein provided shall have that number of votes as is prescribed by sub-rule 24(n);
- (n) Subject to sub-rule 22(o) the number of votes to which each member is entitled shall depend upon each member's classification of membership. The number of votes to which members are so entitled is as follows:
  - Division 1 - 32 votes (each member)
  - Division 2 - 3 votes (each member)
  - Division 3 - 1 vote (each member)
  - Division 4 - 1 vote (each member)

- (o) A member who is a member of more than one Division shall at any general meeting nominate the Division in respect of which he/she exercises his/her vote/s. Such member will not be entitled to exercise a vote in respect of more than one Division.

**23 - MEETINGS OF THE BOARD**

- (a) The Board shall meet at least six (6) times per calendar year or upon the request of the President or any five (5) members of the Board. Such request shall be delivered in writing to the Chief Executive Officer who shall thereupon issue a notice convening the meeting. Six (6) members present at any meeting of the Board shall constitute a quorum. Each Board member present shall have one vote on any resolution before the meeting.
- (b) All members of the Association shall be bound by the decisions of the Board, provided that such decisions are made in accordance with the Rules of the Association.
- (c) Should there be no quorum present within fifteen (15) minutes from the time for which any meeting is called the meeting may be dissolved and the names of the members present shall be recorded in the Minute Book.
- (d) The chairperson of any meeting of the Board shall in addition to any substantive vote to which he/she is entitled have a second or casting vote in the case of equality on the voting or ballot on any resolution.
- (e) Notwithstanding any other provision in this Rule 23, a member of the Board shall be entitled to attend a meeting of the Board by way of telephone, video conference or combination of these forms of communication and attendance by a Board member in such a manner shall be as valid as if the member was in attendance in person at such a meeting.

**24 - NOTICES**

- (a) A notice shall be served by the Association upon any member personally, by sending it through the post in a prepaid envelope addressed to such member at his registered place of address or electronically where the member has nominated an electronic address for service.
- (b) Each member shall notify to the Chief Executive Officer of a postal address in the state of Victoria which shall be deemed his registered address for the purpose of these Rules. Each member may nominate an electronic address which once nominated will be utilised for service in lieu of his postal address.
- (c) As regards those members who have no registered place of address in Victoria a notice posted up in the registered office of the Association shall be deemed to be duly served on them at the expiration of twenty four (24) hours after it is so posted up.
- (d) Any notice sent by post shall be deemed to have been served on the days following that on which the letter, envelope or wrapper containing the same is posted and in proving such service it shall be sufficient to prove that the letter, envelope or wrapper containing the notice was properly addressed and stamped and put into the post office. A certificate in writing signed by the Chief Executive Officer of the Association that the letter, envelope or wrapper containing the notice was so addressed, stamped and posted shall be conclusive evidence thereof.

## 26 - CHIEF EXECUTIVE OFFICER

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- (e) The signature to any notice to be given by the Association may be written or printed.
- (f) Where a given number of days' notice or notice extending over any other period is required to be given the day of service shall unless it is otherwise provided be counted in such number of days or other period.

## 25 - ANNUAL REPORT

The Board shall cause an Annual Report to be prepared for presentation to the Annual General Meeting.

## 26 - CHIEF EXECUTIVE OFFICER

- (a) The Chief Executive Officer shall be appointed by and be responsible to the Board;
- (b) The Chief Executive Officer shall have power in relation to the management of the affairs of the Association and the enforcement of rules of the Association, or the performance of functions in relation to the enforcement of such rules, provided that the Chief Executive Officer participates in such functions only in accordance with the directions of the Board for the purpose of implementing existing policy of the Association or decisions concerning the Association. The Chief Executive Officer shall not participate directly in the determination of policy for the Association or the making, alteration or rescission of rules of the Association.
- (c) Subject to sub-rule 12(b), sub-rule 26(b) and the Rules, the Chief Executive Officer shall without limiting the generality of the foregoing:
  - (i) Have charge of all books of the Association and shall be responsible for their safe custody and also for the safe custody of such other papers and property belonging to the Association as the Board shall direct and shall be responsible for the same to the Board.
  - (ii) Keep all letters and documents properly filed for reference as well as copies of all important papers connected with the affairs of the Association when originals cannot be filed.
  - (iii) Keep minutes of all meetings of the Board and other Committees.
  - (iv) Summon members to meetings.
  - (v) Attend, unless excused, all meetings of the Association, the Board and keep and prepare the Minutes of such meetings where necessary.
  - (vi) Keep the records required to be kept by the Association under any Act and generally prepare for the Deputy President all such returns as are required to be lodged filed or furnished at the prescribed times by the Deputy President and in the prescribed manner and generally do all things necessary to be done in respect of such records and returns.
  - (vii) Be responsible for the general administration of the Association.

**27 - ACCOUNTS AND EXPENDITURE**

- (a) The Association shall keep correct accounts of the receipts and expenditure of the Association and all moneys received shall be forthwith lodged in some bank specified by the Board to the credit of the Association.
- (b) All payments of \$100.00 or more on behalf of the Association shall be made by EFT, Bpay or equivalent unless otherwise determined by the Board and shall be authorised by the Chief Executive Officer or such other officer as approved by the Board.
- (c) If so determined by the Board, a Bank account known as the Chief Executive Officer's Imprest Account may be opened from which payments of salaries, wages and such other disbursements as may from time to time be determined by the Board may be made by cheque signed by any two of the Chief Executive Officer and such other officers of the Association as the Board may determine.
- (d) All expenses or money paid except from petty cash shall subject to sub-rule 27(e) be the subject of approval or confirmation by the Board. Such approval or confirmation shall be in such form as the Board may from time to time determine.
- (e) No loan, grant or donation of any amount exceeding one thousand dollars (\$1,000.00) shall be made by the Association unless the Board:
  - (i) has satisfied itself
    - (1) that the making of the loan, grant or donation would be in accordance with these Rules and any By-laws Regulations and Orders made by the Board from time to time; and
    - (2) in the case of a loan - that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory; and
  - (ii) has approved the making of the loan, grant or donation.
- (f) Sub-rule 27(e) shall not apply to any expenditure of the Association which is by way of provision for, or reimbursement of, out-of-pocket expenses incurred by persons for the benefit of the Association.
- (g) The Chief Executive Officer shall, as soon as practicable after the end of each financial year, cause to be lodged in the Commission a statement signed by an officer, in relation to each loan, grant or donation of an amount exceeding, \$1,000.00 made by the Association during, the financial year, showing the following particulars:
  - (i) the amount of the loan, grant or donation;
  - (ii) the purpose for which the loan, grant or donation was required or made;
  - (iii) in relation to a loan, the security given in relation to the loan; and
  - (iv) except where the loan, grant or donation was made to relieve a member of the Association, or a dependent of a member of the Association, from severe financial hardship, the name and address of the person to whom the loan, grant or donation was made, and in the case of a loan, the arrangements made for the repayment of the loan.

### 31 - DISCLOSURE OF OFFICER'S MATERIAL PERSONAL INTEREST

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#### 28 - AUDIT

- (a) An Auditor shall be appointed in accordance with the Act and the Regulations made thereunder for the ensuing twelve (12) months at the Annual General Meeting of the Association and shall be eligible for re- appointment.
- (b) The Association shall prepare a duly audited General Purpose Financial Report and Committee of Management Statement, covering the period from the date of the presentation of the last statement of accounts up to the date of closing of the Association's financial year, together with an Operating Report.
- (c) The Auditor shall hold office from the time of appointment until the next Annual General Meeting except in the case of death or retirement or by resolution passed by a majority of members present and voting at an Annual General Meeting.

#### 29 - PAYMENTS TO THE ASSOCIATION

All monies received by the Association shall be banked in the name of the Association in such Bank Account as the Board may direct.

#### 30 - DISCLOSURE OF OFFICER'S RELEVANT REMUNERATION AND NON-CASH BENEFITS

- (a) Each Officer of the Association shall disclose to the Association any Remuneration paid to the Officer:
  - (i) because the Officer is a member of a board, if:
    - A. the Officer is a member of the board only because the Officer is an Officer of the Association; or
    - B. the Officer was nominated for the position as a member of the Board by the Association; or
  - (ii) by any Related Party of the Association in connection with the performance of the Officer's duties as an Officer.
- (b) The disclosure required by sub-rule (a) shall be made to the Association:
  - (i) as soon as practicable after the Remuneration is paid to the Officer; and
  - (ii) in writing.
- (c) The Association shall disclose to the Members of the Association:
  - (i) the identity of the Officers who are the five highest paid in terms of Relevant Remuneration for the Disclosure Period, and
  - (ii) for those Officers:
    - A. the actual amount of the Officers' Relevant Remuneration for the Disclosure Period; and
    - B. either the value of the Officers' Relevant Non-Cash Benefits, or the form of the Officers' Relevant Non-Cash benefits, for the Disclosure Period.
- (d) For the purposes of sub-rule (c), the disclosure shall be made:
  - (i) in relation to each financial year;
  - (ii) within six months after the end of the financial year; and
  - (iii) in writing.

#### 31 - DISCLOSURE OF OFFICER'S MATERIAL PERSONAL INTEREST

- (a) Each Officer of the Association shall disclose to the Association any material personal interest in a matter that:
  - (i) the Officer has or acquires; or
  - (ii) a Relative of the Officer has or acquires;

that relates to the affairs of the Association.

- (b) The disclosure required by sub-rule (a) shall be made to the Association:
  - (i) as soon as practicable after the interest is acquired; and
  - (ii) in writing.
- (c) The Association shall disclose to the Members of the Association any interests disclosed to the Association pursuant to sub-rule (a).
- (d) For the purposes of sub-rule (c), the disclosures shall be made:
  - (i) in relation to each financial year;
  - (ii) within six months after the end of the financial year; and
  - (iii) in writing.
- (e) The Board will consider such Declaration of Interest and determine appropriate mechanisms by which such interests would be avoided or mitigated provided that:
  - (i) any member of the Board with such interest will not be involved in the deliberations about the affairs of the Association related to the declared matter
  - (ii) where appropriate, the Board may engage an independent person to consider and make recommendations as to managing any personal interest.

### **32 - DISCLOSURE BY ASSOCIATION OF PAYMENTS**

- (a) The Association shall disclose to the Members of the Association either:
  - (i) each payment made by the Association, during the disclosure period:
    - A. to a Related Party of the Association; or
    - B. to a Declared Person or Body of the Association; or
  - (ii) the total of the payments made by the Association, during the disclosure period:
    - A. to each Related Party of the Association; or
    - B. to each Declared Person or body of the Association.
- (b) Sub-rule (a) does not apply to a payment made to a Related Party if the payment consists of amounts deducted by the Association from Remuneration payable to Officers or employees of the Association.
- (c) For the purposes of sub-rule (a), the disclosures shall be made:
  - (i) in relation to each financial year;
  - (ii) within six months after the end of the financial year; and
  - (iii) in writing.

### **33 - ASSOCIATION POLICIES AND PROCEDURES**

- (a) The Association shall develop and implement policies and procedures relating to the expenditure of the Association.
- (b) All policies and procedures in relation to the Association's expenditure must be approved by the Board.

### 34 - FINANCIAL TRAINING

~~All Officers whose duties include duties that relate to the financial management of the Association (Financial Duties) must undertake training:~~

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~~(a) approved by the Registered Organisations Commissioner under section Section 293L of the Act; and~~

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~~(b) that covers each of the Officer's Financial Duties;~~

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~~within six (6) months after the Officer begins to hold Office unless they hold an exemption which may granted by the Registered Organisations Commissioner in certain circumstances..~~

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### 35 - APPLICATION OF INCOME AND PROPERTY

- (a) The income and property of the Association wheresoever derived shall be applied solely towards the promotion of the objects of the Association as set forth in these Rules and no part thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members of the Association.
- (b) Nothing contained in sub-rule 35(a) shall prevent the payment in good faith of remuneration to any officers or servants of the Association or to any Barrister and Solicitor or to any person not being a member of the Association in return for any services actually rendered to the Association nor prevent the payment of interest at a rate not exceeding, ten (10) per centum per annum on any money borrowed from or lawfully due to any member of the Association nor to the payment to any member for any occasional service.

### 36 - INVESTMENT OF FUNDS

- (a) The Board may by resolution direct the investment of any funds of the Association which it considers surplus to current requirements in any security in which Trustees are authorised to invest moneys under any law of the Commonwealth of Australia or the State of Victoria and also in or upon any shares, stock or debentures of any company whether listed on any Stock Exchange in Australia, or not, and also in any notes registered or unregistered secured or unsecured issued by any such company and also on deposit with any such company or in or upon deposit with any Bank or Co- operative Housing Society in Australia or in Real Estate.
- (b) The Board shall not incur any responsibility by virtue of any such investments except in the case of wilful default or dishonesty.

### 37 - PROPERTY

- (a) All property which may be acquired or be purchased with the moneys of the Association or be donated to the Association shall be vested in the Association and the Board shall have power to control and invest the same in the name of the Association.
- (b) At the direction and discretion of the Board, the Association may buy and sell at auction or by private contract any freehold or leasehold property, take on lease or licence any property and expend monies on the renovation, alteration and improvements of such property or any purchase land and erect buildings thereon for the purpose of furthering any of the objects of the Association and lease or hire any such property and mortgage or encumber such property.



### 38 - OBSERVANCE OF RULES

Every member shall be bound to further to the best of his/her ability the objects, interests and influences of the Association and shall observe these Rules.

### 39 - BREACHES OF RULES

- (a) The Chief Executive Officer may and shall, if so directed by the Board, charge any member with an offence against these Rules. Such charge shall be in writing, signed by the Chief Executive Officer and a copy thereof shall be sent to the member so charged by post addressed to him/her at his/her address on the register of members.
- (b) If any member be charged with a breach of these Rules or failure to observe a resolution of the Board of which he/she shall have had notice he/she shall within fourteen (14) days of the time when a copy of the charge shall have been posted or delivered to him/her answer such charge in writing.
- (c) The Chief Executive Officer shall report to the Board all relevant facts surrounding the charge made, the result of his/her investigations and the answer made by the member charged and the Board shall deal with the matter on the evidence tendered by the Chief Executive Officer and the member charged may, if he/she so desires, appear with any representative before the Board and answer the charge. The member charged shall be given seven (7) days notice of the meeting at which the Chief Executive Officer's report is to be considered and a copy of that report and be advised that his/her representative may attend that meeting to answer the charge.
- (d) If upon any charge as aforesaid, a member be held by the Board to have committed any breach of these Rules, or to have failed to observe a resolution of the Board of which he/she has had notice he/she may by resolution of the Board:
  - (i) be reprimanded; or
  - (ii) be fined a sum not exceeding \$200; or
  - (iii) be expelled from the Association.
- (e) Any member who shall be expelled from the Association or struck off the roll of membership shall forfeit any interest in or right to any assets or property of the Association.
- (f) A member expelled from the Association under this Rule may by notice in writing addressed to the Chief Executive Officer at the office of the Association within twenty-one (21) days of the date of the Chief Executive Officer's notification to him/her of his/her expulsion, appeal to the Board which shall hear his/her representations and a report from the Board and may allow the appeal or dismiss it or, in lieu of expulsion, fine the member a sum not exceeding \$200.

### 40 - ALTERATION TO RULES

Subject to sub-rule 13(b) these Rules may be amended, altered, varied, modified, deleted or added to at any General Meeting of the Association, duly convened and held, provided that notice in writing of the proposed amendments shall have been sent to all members at least twenty-one (21) days prior to such meeting, and provided that no Rule shall be amended, altered, varied, modified, deleted or added to except by a resolution carried by a three-fourths majority of the members present and voting.

#### **41 - SEAL**

The Board shall provide for the safe custody of the seal and it shall be used only by the authority of the Board or of a committee of the Board authorised by the Board to authorise the use of the seal and every instrument to which the seal is affixed shall be signed by a member of the Board and, subject to directions given by the Board and/or the Executive, in accordance with sub-rule 26(b), countersigned by the Chief Executive Officer or the acting Chief Executive Officer for the time being of the Association. subject to directions given by the Board in accordance with sub-rule 26(b), the Chief Executive Officer shall keep a register of documents to which the seal is affixed and that register shall be tabled at every meeting of the Board of the Association.

#### **42 - ARBITRATION PROCEEDINGS**

The Board may by resolution give the consent of the Association to the lodging of any document under the Act or other legislation and without limiting the generality thereof submit any industrial dispute to conciliation and arbitration or object to the registration of any organisation or any application to amend the Rules of any organisation and in respect of any such proceedings, the Association may be represented therein by the Chief Executive Officer or such other persons as may be determined by the Board.

#### **43 - EXECUTION OF DOCUMENTS**

Subject to Rule 41 Industrial Agreements and other documents may be entered into and executed by or on behalf of the Association by the Chief Executive Officer under the authority of the Board.

#### **44 - INDEMNITY**

Every member of the Board and every officer and servant of the Association shall be indemnified by the Association against all costs, losses and expenses which any such member, officer or servant may incur or become liable for by reason of any contract entered into or act or thing done by him/her in the exercise of his/her duties in any of those capacities respectively and it shall be the duty of the Council or the Board out of the funds of the Association to pay all such costs, losses and expenses, unless the losses or expenses are incurred through their own wilful default, wilful neglect, dishonesty or an act of malefeasance.

#### **45 - GENERAL**

- (a) A resolution in writing signed by all members of Board for the time being in Victoria (not being less than the number fixed by or pursuant to these Rules as a quorum) shall be as valid and effectual as if it had been passed at a meeting of Board duly called and constituted.
- (b) Subject to the provisions of the Act, all acts and decisions of Board shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of the members of Board or any of them, or that they or any of them were not qualified to act as members or a member of Board be as valid and effectively for all purposes as if all members of Board had been duly appointed and were qualified to act as such.
- (c) (i) No member of the Board (any such member being hereinafter referred to as a "member") shall be disqualified by his/her office from holding any office or place of profit under the Association or under any body corporate in which the Association shall be a shareholder or otherwise interested or from contracting with the Association either as vendor, purchaser or otherwise howsoever, nor shall any such contract or arrangement entered into by or on behalf of the Association in which any member shall be in any way interested be avoided, nor shall any member be liable to account to the Association for any profit arising from any such office or place of profit, or realised by any such contract or arrangement by reason only of such member holding that office, or of the fiduciary relations thereby established, but it is declared that the

#### 47- DEFINITIONS

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nature of his/her interest must be disclosed by him/her at the first meeting of each such Board at which the contract or arrangement is taken into consideration if his/her interest that exists or in any other case at the first meeting of Board after the acquisition of his/her interest.

- (ii) If a member becomes interested in a contract or arrangement after it is made or entered into the disclosure of his/her interest shall be made at the first meeting of each such Board held after he/she becomes so interested.
  - (iii) No member shall as a member vote in respect of any contract or arrangement in which he/she is so interested as aforesaid and if he/she does so vote his/her vote shall not be counted but this prohibition may at any time or times be suspended or relaxed to any extent by a General Meeting, and such prohibition shall not apply to any contract or arrangement between the Association and any body corporate in which the Association is a shareholder, or in which shares are held by any Corporation in which the Association has the right to appoint Directors.
  - (iv) No member shall as a member vote in respect of any industrial matter in which he/she has a direct pecuniary interest and if he/she does vote his/her vote shall not be counted but this prohibition may at any time or times be suspended or relaxed to any extent by a General Meeting.
  - (v) An interested member may sign any instrument to which the seal of the Association is affixed.
- (d) A general notice to the Board that a member is a member of any specified firm or corporation and is to be regarded as interested in all transactions with that firm or corporation shall be sufficient disclosure under this Rule to the Board as regards such member and the said transaction, and after such general notice it shall not be necessary for such member to give a special notice to the respective Board relating to any particular transaction with that firm or corporation provided such notice is given at a meeting of the respective Board or brought up and read at the next meeting of the respective Board after it is given.

#### 46 - DEREGISTRATION

The Rules of the Association shall have full force and effect notwithstanding deregistration of the Association as an organisation of employers under the Act.

#### 47- DEFINITIONS

" Act" means the Fair Work (Registered Organisations) Act 2009.

"Board" means the Board of the Association as described in Rule 11.

"Commission" means the Fair Work Commission.

"Disclosure Period" means a financial year.

"Declared Person or Body"

A person is a declared person or body if:

- (i) The Officer of the Association has disclosed a material personal interest under sub-rule 31(a); and
- (ii) The interest relates to, or is in, the person or body; and
- (iii) The Officer has not notified the Association that the Officer no longer has the interest.

"Executive Staff" means the Chief Executive Officer or the Deputy Chief Executive Officer or an Executive employee of the member who reports directly to either the Chief Executive Officer or Deputy Chief Executive Officer.

#### 47- DEFINITIONS

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"Financial Duties" includes duties that relate to the financial management of the Association.

"General Manager" means the General Manager of the Fair Work Commission.

"Health Services" shall be defined in accordance with the definitions used in the Health Services Act 1988 (Victoria).

"Industry" means the public hospital and public health services industry as described in Rule 4.

"Member" shall include, where the content allows, one of the properly appointed representative as described with Rule 15.

"Non-Cash Benefit" means property or services in any form other than money, but does not include a portable computer, mobile phone or other electronic device that is used only or mainly for work purposes.

"Office" has the same meaning as defined in section 9 of the Act.

"Officer" has the same meaning as defined by section 6 of the Act.

"Regulations" means the Fair Work (Registered Organisations) Regulations 2009.

"Related Party" has the same meaning as defined by Section 9B of the Act.

"Relative" in relation to an Officer means:

- (i) A parent, step-parent, child, step-child, grandparent, grandchild, brother or sister of the Officer; or
- (ii) The spouse of the Officer.

"Relevant Non-Cash Benefits" in relation to an Officer of the Association for a Disclosure Period means the non-cash benefits provided to the officer, at any time during the disclosure period, in connection with the performance of the Officer's duties as an Officer, by the Association or by a Related Party of the Association.

"Relevant Remuneration" in relation to an Officer of the Association for a Disclosure Period is the sum of the following:

- (i) Any remuneration disclosed to the Association by the Officer under sub-rule 30(a) during the Disclosure Period; and
- (ii) Any remuneration paid during the Disclosure Period to the Officer of the Association.

"Remuneration"

- (i) Includes pay, wages, salary, fees, allowances, leave, benefits or other entitlements; but
- (ii) Does not include a non-cash benefit; and
- (iii) Does not include the reimbursement or payment of reasonable expenses for the costs incurred in the course of the Officer carrying out his or her duties.

"his", "him" and "he" shall have the same meaning as "hers", "her", and "she" wheresoever they appear within these Rules

47- DEFINITIONS

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A reference to any Act of Parliament shall include, where the content allows, any regulations or rules made pursuant thereto, and a reference to any Act of Parliament or section thereof or schedule thereto shall be read as if the words "or any statutory modification or re-enactment thereof or substitution therefore" were added to the reference.

**\*\*\* END OF RULES \*\*\***