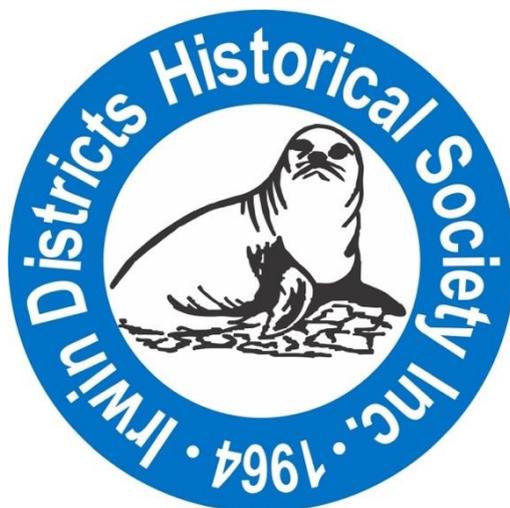


# IRWIN DISTRICTS HISTORICAL SOCIETY INCORPORATED



## CONSTITUTION OF THE SOCIETY

(Rules of Association)

As Last Amended by Special Resolutions of a  
Special General Meeting of the Society held at the  
Irwin Districts Museum, Old Police Station, Dongara  
on 11<sup>th</sup> December 2020

Approved by the  
Commissioner for Consumer Protection  
on 26<sup>th</sup> February 2021

The notes within the rules are for guidance and do not form part of the rules.  
A compendium of notes is contained in Appendix I

*The Society is a Tier 1 Association to which section 64(1)  
of the Associations Incorporation Act 2015 (WA) applies*

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## PART I – PRELIMINARY

### 1. Name of the Association

The name of the association is Irwin Districts Historical Society Incorporated, herein after referred to as ‘the Society’ or ‘the Association’.

### 2. Objectives of Association

- I. To encourage the study and writing of the histories of the *Irwin Districts*;
- II. To maintain the identity of the *Irwin Districts* through the *conservation* of *places* of cultural and *natural* heritage significance, and the *preservation* of *records* and *objects* of artistic, cultural, or scientific significance, for the benefit of the community;
- III. To establish and maintain *public libraries*, *public museums*, *public art galleries* and other associated facilities, such as archives, reading rooms and open spaces, for the advancement of these objectives;
- IV. To maintain the association as a *registered charity* for the purpose of advancing these objectives;
- V. To receive, including as a *deductible gift recipient*, and expend funds, including donations, for the express purpose of advancing these charitable objects;
- VI. To acquire, hold, conserve, develop, deal with and dispose of real and intangible property solely for the benefit and support of these charitable objects;
- VII. To apply the assets and income of the association solely to furthering its objectives and ensure no portion shall be distributed directly or indirectly to the members of the association except as genuine compensation for services rendered or expenses incurred on behalf of the association;
- VIII. To facilitate communication through publication by physical, electronic and other means, and otherwise promote the exchange of information among members and the public, relating to these objectives;
- IX. To promote public interest in and an awareness and appreciation of Aboriginal histories in *Irwin Districts* and *Westralian* history;
- X. To encourage and facilitate research into family histories, place name histories, significant historical events, monuments, *landscapes*, environmental histories, maritime histories, multicultural histories, convict histories, biographies and all other aspects of historical diversity in the *Irwin Districts*;
- XI. To found, subsidise or contribute to educational scholarships, awards and so on to promote these objectives;
- XII. To join with other entities having similar objectives to pursue common aims; and
- XIII. To recognise and honour achievement in advancing these objectives or for outstanding contribution to the study, writing, illustration or performance of *Irwin Districts*, *Westralian* and other histories.

*Note: terms in italics are defined in Rule 7.*

### 3. Quorum at general meetings

Any eight members personally present (being members entitled to vote under these rules at a general meeting) will constitute a quorum for the conduct of business at a general meeting

### 4. Quorum at committee meetings

Any four committee members constitute a quorum for the conduct of the business of a committee meeting

### 5. Financial year

The association’s financial year will be the period of 12 months commencing on the first day of July in each year and ending on the last day of June in the following year.

## 6. Powers of Association

Under section 14 of the Act the Association may do all things necessary or convenient for carrying out its objects or purposes.

## 7. Definitions of terms used

In these rules, unless the contrary intention appears —

*Act* means the *Associations Incorporation Act 2015 (WA)*;

*archives* means the records of any organisation or individual selected for indefinite retention on the basis of their cultural, scientific, or historical research value;

*Associate Member* means a member with the rights of an associate member referred to in rule 15;

*Association* means the incorporated association to which these rules apply;

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

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

*by laws* means by-laws made by the Association under rule 72;

*Chair* means the Committee member holding office as the Chair of the Association;

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

*Committee, the* means the management committee of the Association;

*committee meeting* means a meeting of the committee;

*committee member* means a member of the committee;

*conservation* means all the processes of looking after a place so as to maintain its cultural or natural significance, including any measure taken to maintain the integrity of any object, record or collection;

*Deductible Gift Recipient* means an entity endorsed by the Australian Tax Office that can receive donations which are tax deductible for the donor;

*emblem* means any distinctive symbol, badge, logo or heraldic device adopted by a general meeting to represent the Society;

*financial records* includes —

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

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

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

**financial year**, of the Association, has the meaning given in rule 5;

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

**general committee member** means a committee member who is not an office holder of the Association under rule 35(4);

**honours** means any thing conferred on a person (including a body corporate) by the Society as a sign of distinction and respect;

**Irwin Districts** means any geographical locality that is now or has ever been within the boundaries of the former Irwin Roads Board District or the Shire of Irwin, regardless of time, and any other locality with a historical association with the Irwin Districts

**landscape** means a geographical area illustrating the interactions between human societies and their environments, to which they have given meaning, and which contains a cumulative record of human activities and land uses over time;

**member** means a person (including a body corporate) who is member of the Association in any class on membership;

**natural heritage** means any element of the natural world, including flora and fauna, ecosystems and geological structures, that has aesthetic, historic, scientific, or social significance;

**natural history** means the study and description of living things and natural objects, especially their origins, evolution, and relationships to one another, including botany, zoology, and geology;

**object** means any tangible artefact of artistic, cultural, or scientific significance held in a collection for cultural, educational or research purposes;

**Ordinary Member** means a member with the rights of an Ordinary Member referred to in rule 15;

**place** means a geographically defined area, and may include elements, objects, spaces and views, and all its tangible and intangible dimensions;

**preservation** means maintaining a place, object or record in its present state and inhibiting further physical deterioration;

**public art gallery** means any place managed by the association that is distinguishable and set apart for the exhibition of works of art, which is open to the public, and to which any gifts made are only used for the purposes of a gallery;

**public library** means any place managed by the association that is distinguishable and set apart to contain books, records and other literary material for reading, study, research or reference, which is open to the public, and to which any gifts made are only used for the purposes of a library;

**public museum** means any place managed by the association that is distinguishable and set apart for the keeping, exhibition and study of objects of historical, scientific or artistic interest and significance, which is open to the public, and to which any gifts made are only used for the purposes of a museum;

**record** means any document or other source of information recorded or stored in writing, film, any electronic process or any other manner, and includes the books of the association;

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

**registered charity** means a not-for-profit entity with a purpose that is beneficial to the community and which maintains its registration under the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)*;

*rules* means these rules of the Association, as in force for the time being, and titled the Constitution of the Society;

*Secretary* means the committee member holding office as the secretary of the Association;

*Society* means the Association named the Irwin Districts Historical Society Incorporated and which is constituted by these rules;

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

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

*sub-committee* means a sub-committee appointed by the committee under rule 56(1)(a);

*subscription* means the contribution paid in advance, annually or otherwise, by each member for their membership of the Association;

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

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

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

*Treasurer* means the committee member holding office as the treasurer of the Association;

*Westralian* means the people, places, objects, records and events collectively contributing to the geographical area and cultural identity of the place now called Western Australia and its peoples, regardless of time.

## PART II – ASSOCIATION TO BE NOT FOR PROFIT BODY

### 8. Not-for-profit body

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

## PART III – MEMBERS

### 9. Eligibility for membership

- (1) Any person who supports the objects or purposes of the Association is eligible to apply to become a member.

- (2) An individual who has not reached the age of 18 years is not eligible to apply for a class of membership that confers full voting rights.

*Note: Under sections 4 and 17 of the Act an association must always have at least 6 members with full voting rights.*

*Note: The association must comply with all legal and regulatory obligations that may apply to the association under any other law when assessing eligibility of an applicant for membership.*

## 10. Applying for membership

- (1) A person who wants to become a member must apply in writing to the Association:
  - (a) The committee must from time to time approve a membership application form for that purpose.
  - (b) The application must be signed by the applicant.
  - (c) The applicant must specify in the application the class of membership for which the application is made
- (2) The applicant must specify in the application the class of membership, if there is more than one, to which the application relates.
- (3) The committee may refuse to accept any application, or ask any applicant for further information before making any decision on the application.
- (4) The committee, in refusing an application or in asking for further information from an applicant, may or may not provide reasons for its decision or request.

## 11. Dealing with membership applications

- (1) The committee must consider each application for membership of the Association and decide whether to accept or reject the application.
- (2) Subject to sub-rule (3), the committee must consider applications in the order in which they are received by the Association.
- (3) The committee may delay its consideration of an application if the committee considers that any matter relating to the application needs to be clarified by the applicant or that the applicant needs to provide further information in support of the application.
- (4) The committee must not accept an application unless the applicant —
  - (a) is eligible under rule 9; and
  - (b) has applied under rule 10.
- (5) The committee may reject an application even if the applicant —
  - (a) is eligible under rule 9; and
  - (b) has applied under rule 10.
- (6) The committee must notify the applicant of the committee's decision to accept or reject the application as soon as practicable after making the decision.
- (7) If the committee rejects the application, the committee is not required to give the applicant its reasons for doing so.

## 12. Becoming a member

An applicant for membership of the Association becomes a member when —

- (a) the committee accepts the application; and
- (b) the applicant pays any membership fees payable to the Association under rule 20.

*Note: The applicant immediately becomes a member, when rule 20 has been fulfilled, and is entitled to exercise all the rights and privileges of membership, including the right to vote (if applicable), and must comply with all of the obligations of membership under these rules.*

*Note: Member to receive rules – section 36(1)(b) of the Act provides that the association must give each person who become a member of the association of copy of the rules in force at the time their membership commences.*

*Note: Format of rules provided - It is acceptable for the association to provide a copy of the rules to new members by electronic transmission or providing the details for the website whether the rules may be downloaded. A hard copy must be provided if the member requests that the rules be provided in that manner.*

### 13. Membership - classes

- (1) The Association consists of its members, in such classes of membership as provided for under sub-rule (2).
- (2) The Association has the following classes of membership:
  - a. Associate
  - b. Ordinary
  - c. Household
  - d. Honorary Life
  - e. Fellow
  - f. Corporate
- (2) A person can only belong to one class of membership at any one time.
- (3) The number of members of any class, except the Honorary Life and Fellow classes, is not limited.

### 14. Membership – definition of classes

- (1) Associate: any person who is below 18 years of age
- (2) Ordinary: any person who is not a member in any other class of membership.
- (3) Household: any two or more persons residing at the same address.
- (4) Honorary Life: any member
  - a. who has rendered valuable service in furthering the objectives of the Society, and
  - b. who has been recommended by the committee to an annual general meeting for election as an Honorary Life Member, and
  - c. whose election has been decided by a majority vote of members present.
- (5) Fellow: any person
  - a. Who has produced distinguished original research in the field of Irwin Districts or Westralian history or other historical or literary work of outstanding value to the community, and
  - b. Who has been recommend by the committee to an annual general meeting for election as a Fellow of the Society, and
  - c. whose election has been decided by a majority vote of members present.
- (6) The membership class of any member elected to an Honorary Life membership or Fellowship terminates and is succeeded by their new class of membership as from the date of their election to that new class.
- (7) Corporate: any entity as defined in section 24(1) of the Act or any other body registered under the Corporations Act.

### 15. Membership - rights and responsibilities

- (1) The rights and responsibilities of any member are to participate in Society activities, attend Society meetings and events, receive Society publications and, unless otherwise specified in this section, to vote on matters pertaining to the Society.
- (2) Associate: an Associate member is
  - a. not entitled to vote,

- b. is not eligible for election to the committee,
  - c. but otherwise has the same rights and responsibilities as an Ordinary member.
- (3) Ordinary: an Ordinary member has full voting rights and any other rights, privileges and responsibilities conferred on members by these rules or approved by resolution at a general meeting or determined by the committee.
- (4) Household: a Household member, regardless of the number of persons in the household,
  - a. has one vote,
  - b. has all the rights and privileges of an Ordinary member, and
  - c. is eligible for election to the committee.
- (5) Honorary Life: an Honorary Life member is
  - a. exempt from the payment of subscriptions, fees and contributions but otherwise shall have all the rights and responsibilities of an Ordinary member,
  - b. may receive a certificate under the seal of the Society, stating the date and other details, and the purpose for which Honorary Life membership was conferred, and
  - c. is entitled to use in the customary manner the post-nominal designation IDHS (Hon)
- (6) The number of members elected to the class of Honorary Life member is limited to ten (10) at any one time.
- (7) Fellow: a Fellow of the Society is
  - a. exempt from the payment of subscriptions, fees and contributions but otherwise shall have all the rights and responsibilities of an Ordinary member,
  - b. may receive a certificate under the seal of the Society, stating the date and other details, and the purpose for which the Fellowship was conferred, and
  - c. is entitled to use in the customary manner the post nominal letters FIDHS
- (8) The number of members elected to the class of Fellow is limited to five (5) at any one time.
- (9) Corporate: a Corporate member
  - a. is not eligible for election to the committee but otherwise has all the rights and responsibilities of an Ordinary member, and
  - b. must nominate to the Secretary one individual member of the body corporate to exercise such rights before so exercising them.

## 16. Patronage

- (1) Any distinguished person is eligible, with their consent, for election as a Patron or Co-Patron of the Society;
- (2) The Society may at an Annual General Meeting elect a patron or co-patrons, who shall hold office until a successor patron or co-patron is elected in their place;
- (3) There shall be a maximum of two patrons at any one time;
- (4) A patron or co-patron is exempt from the payment of any membership subscription; and
- (5) Subject to rule 8(3), the office of patron or co-patron is an honorary office and not eligible for any payment from the Society's funds.

## 17. When membership ceases

- (1) A person ceases to be a member when any of the following takes place —
  - (a) for a member who is an individual, the individual dies;
  - (b) for a member who is a body corporate, the body corporate is wound up;
  - (c) the person resigns from the Association under rule 18;
  - (d) the person is expelled from the Association under rule 23;
  - (e) the person ceases to be a member under rule 20(4).
- (2) The Secretary must keep a record, for at least one year after a person ceases to be a member, of —
  - (a) the date on which the person ceased to be a member; and

- (b) the reason why the person ceased to be a member.

## 18. Resignation

- (1) A member may resign from membership of the Association by giving written notice of the resignation to the Secretary.
- (2) The resignation takes effect —
  - (a) when the Secretary receives the notice; or
  - (b) if a later time is stated in the notice, at that later time.
- (3) A person who has resigned from membership of the Association remains liable for any fees that are owed to the Association (the *owed amount*) at the time of resignation.
- (4) The owed amount may be recovered by the Association in a court of competent jurisdiction as a debt due to the Association.

## 19. Rights not transferable

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

## Membership subscriptions

### 20. Subscriptions - determination

- (1) The committee must determine the entrance fee (if any) and the annual membership subscription (if any) to be paid for membership of the Association.
- (2) The subscriptions determined under sub-rule (1) may be different for different classes of membership.
- (3) A member must pay the annual membership subscription to the Treasurer, or another person authorised by the committee to accept payments, by the date (the due date) determined by the committee.
- (4) If a member has not paid the annual membership subscription within the period of 3 months after the due date, the member ceases to be a member on the expiry of that period.
- (5) If a person who has ceased to be a member under sub-rule (4) offers to pay the annual membership subscription after the period referred to in that sub-rule has expired —
  - (a) the committee may, at its discretion, accept that payment; and
  - (b) if the payment is accepted, the person's membership is reinstated from the date the payment is accepted.
- (6) The membership subscription of a new member, in any class, who is accepted as a member of the Society in the final quarter of a financial year, will cover that quarter and all of the next following financial year.

## Register of Members

### 21. Register of Members

- (1) The Secretary, or another person authorised by the committee, is responsible for the requirements imposed on the Association under section 53 of the Act to maintain the Register of Members and record in that Register any change in the membership of the Association.
- (2) In addition to the matters referred to in section 53(2) of the Act, the Register of Members must include the class of membership (if applicable) to which each member belongs and the date on which each member becomes a member.
- (3) The Register of Members must be kept at the Secretary's place of residence, or at another place determined by the committee.

- (4) A member who wishes to inspect the Register of Members must contact the Secretary to make the necessary arrangements.
- (5) If —
  - (a) a member inspecting the Register of members wishes to make a copy of, or take an extract from, the Register under section 54(2) of the Act; or
  - (b) a member makes a written request under section 56(1) of the Act to be provided with a copy of the Register of Members,

the committee may require the member to provide a statutory declaration setting out the purpose for which the copy or extract is required and declaring that the purpose is connected with the affairs of the Association.

*Note: Section 53 of the Act requires an incorporated association to maintain a register of its members and record in the register any change in the membership of the association. Any change to the register must be recorded within 28 days after the change occurs.*

*Note: Under section 53(2) of the Act the register of members must include each member's name and a residential, postal or email address.*

*Note: Under section 54 of the Act a member is entitled to inspect the register free of charge. The member may make a copy of, or take an extract from, the register but has no right to remove the register for that purpose.*

*Note: Under section 56 of the Act the management committee is authorised by to determine a reasonable charge for providing a copy of the register.*

## PART IV – DISCIPLINARY ACTION, DISPUTES AND MEDIATION

### Division 1 – Term used

#### 22. Term used: member

In this Part —

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

### Division 2 – Disciplinary action

#### 23. Suspension or expulsion

- (1) The committee may decide to suspend a member's membership or to expel a member from the Association if —
  - (a) the member contravenes any of these rules; or
  - (b) the member acts detrimentally to the interests of the Association.
- (2) The Secretary must give the member written notice of the proposed suspension or expulsion at least 28 days before the committee meeting at which the proposal is to be considered by the committee.
- (3) The notice given to the member must state —
  - (a) when and where the committee meeting is to be held; and
  - (b) the grounds on which the proposed suspension or expulsion is based; and
  - (c) that the member, or the member's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the committee about the proposed suspension or expulsion;
- (4) At the committee meeting, the committee must —
  - (a) written and oral) submissions to the committee about the proposed suspension or expulsion; and
  - (b) give due consideration to any submissions so made; and
  - (c) decide —
    - (i) whether or not to suspend the member's membership and, if the decision is to suspend the membership, the period of suspension; or

- (ii) whether or not to expel the member from the Association.
- (5) A decision of the committee to suspend the member's membership or to expel the member from the Association takes immediate effect.
- (6) The committee must give the member written notice of the committee's decision, and the reasons for the decision, within 7 days after the committee meeting at which the decision is made.
- (7) A member whose membership is suspended or who is expelled from the Association may, within 14 days after receiving notice of the Committee's decision under sub-rule (6), give written notice to the Secretary requesting the appointment of a mediator under rule 31.
- (8) If notice is given under sub-rule (7), the member who gives the notice and the committee are the parties to the mediation.

**Note:** *Once the committee has decided to suspend or expel a member under rule 23 the member is immediately suspended or expelled.*

#### 24. Consequences of suspension

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

### Division 3 – Resolving disputes

#### 25. Terms used

In this Division —

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

***party to a dispute*** includes a person –

- (a) who is a party to the dispute; and
- (b) who ceases to be a member within 6 months before the dispute has come to the attention of each party to the dispute.

#### 26. Application of Division

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

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

#### 27. Parties to attempt to resolve dispute

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

#### 28. How grievance procedure is started

- (1) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 19, any party to the dispute may start the grievance procedure by giving written notice to the Secretary of —
  - (a) the parties to the dispute; and

- (b) the matters that are the subject of the dispute.
- (2) Within 28 days after the Secretary is given the notice, a committee meeting must be convened to consider and determine the dispute.
- (3) The Secretary must give each party to the dispute written notice of the committee meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.
- (4) The notice given to each party to the dispute must state —
  - (a) when and where the committee meeting is to be held; and
  - (b) that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the committee about the dispute.
- (5) If —
  - (a) the dispute is between one or more members and the Association; and
  - (b) any party to the dispute gives written notice to the Secretary stating that the party —
    - (i) does not agree to the dispute being determined by the committee; and
    - (ii) requests the appointment of a mediator under rule 31,the committee must not determine the dispute.

## **29. Determination of dispute by committee**

- (1) At the committee meeting at which a dispute is to be considered and determined, the committee must —
  - (a) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the committee about the dispute; and
  - (b) give due consideration to any submissions so made; and
  - (c) determine the dispute.
- (2) The committee must give each party to the dispute written notice of the committee's determination, and the reasons for the determination, within 7 days after the committee meeting at which the determination is made.
- (3) A party to the dispute may, within 14 days after receiving notice of the committee's determination under sub-rule (1)(c), give written notice to the Secretary requesting the appointment of a mediator under rule 31.
- (4) If notice is given under sub-rule (3), each party to the dispute is a party to the mediation.

## Division 4 – Mediation

### 30. Application of Division

- (1) This Division applies if written notice has been given to the Secretary requesting the appointment of a mediator —
  - (a) by a member under rule 23(7); or
  - (b) by a party to a dispute under rule 28(5)(b)(ii) or 21(3).
- (2) If this Division applies, a mediator must be chosen or appointed under rule 31.

### 31. Appointment of mediator

- (1) The mediator must be a person chosen —
  - (a) if the appointment of a mediator was requested by a member under rule 23(7) — by agreement between the Member and the committee; or
  - (b) if the appointment of a mediator was requested by a party to a dispute under rule 28(5)(b)(ii) or 29(3) — by agreement between the parties to the dispute.
- (2) If there is no agreement for the purposes of sub-rule (1)(a) or (b), then, subject to sub-rules (3) and (4), the committee must appoint the mediator.
- (3) The person appointed as mediator by the committee must be a person who acts as a mediator for another not-for-profit body, such as a community legal centre, if the appointment of a mediator was requested by —
  - (a) a member under rule 23(7); or
  - (b) a party to a dispute under rule 28(5)(b)(ii); or
  - (c) a party to a dispute under rule 29(3) and the dispute is between one or more members and the Association.
- (4) The person appointed as mediator by the committee may be a member or former member of the Association but must not —
  - (a) have a personal interest in the matter that is the subject of the mediation; or
  - (b) be biased in favour of or against any party to the mediation.

### 32. Mediation process

- (1) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- (2) Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least 5 days before the mediation takes place.
- (3) In conducting the mediation, the mediator must —
  - (a) give each party to the mediation every opportunity to be heard; and
  - (b) allow each party to the mediation to give due consideration to any written statement given by another party; and
  - (c) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- (4) The mediator cannot determine the matter that is the subject of the mediation.
- (5) The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.
- (6) The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.

### 33. If mediation results in decision to suspend or expel being revoked

If —

- (a) mediation takes place because a member whose membership is suspended or who is expelled from the Association gives notice under rule 23(7); and
- (b) as the result of the mediation, the decision to suspend the member's membership or expel the member is revoked,

that revocation does not affect the validity of any decision made at a committee meeting or general meeting during the period of suspension or expulsion.

## **PART V – THE MANAGEMENT COMMITTEE**

### **The Committee**

#### **34. Committee Powers**

- (1) The committee members are the persons who, as the management committee of the Association, have the power to manage the affairs of the Association.
- (2) Subject to the Act, these rules, the by-laws (if any) and any resolution passed at a general meeting, the committee has power to do all things necessary or convenient to be done for the proper management of the affairs of the Association.
- (3) The committee must take all reasonable steps to ensure that the Association complies with the Act, these rules and the by-laws (if any).
- (4) The committee may form or take part in the formation of companies, co-operatives, partnerships, joint ventures, trusts or other business arrangements where the property and income from such arrangements is applied solely towards the objectives of the association, and no part of that property or income may be paid or otherwise distributed, subject to rule 8, directly or indirectly to any member.

*Note: Under section 14 of the Act the Association may do all things necessary or convenient for carrying out its objects or purposes. Section 14(1)(a)-(g) of the Act provides particular examples.*

#### **35. Committee members and their duties**

- (1) The committee will consist of a maximum of ten (10) members.
- (2) The committee consists of
  - a. the office holders of the Society; and
  - b. at least one general member.
- (3) The following are the office holders of the Society —
  - a. the Chair;
  - b. the Deputy Chair;
  - c. the Secretary;
  - d. the Treasurer.
- (4) A member of the committee who is not an office holder is termed a general member.
- (5) A member of the Society may be a committee member if the member —
  - a. is an individual who has reached 18 years of age; and
  - b. is not an Associate or a Corporate member.
- (6) A person must not hold two or more of the offices mentioned in sub-rule (3) at the same time.

**Note:** Section 3 of the Act provides a definition of “officer”. The duties provisions will apply to committee members and to those persons who have the ability to influence the management committee but who do not hold a formal committee position

**Note:** Under section 44 of the Act an officer of an association must exercise their powers and discharge their duties with a degree of care and diligence that a reasonable person would exercise if that person-

- a) were an officer of the association in the association’s circumstances; and
- b) occupied the office held by, and had the same responsibilities within the association as, the officer.

**Note:** Under section 45 of the Act an officer of an association must exercise their powers and discharge their duties-

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

**Note:** Under section 46 of the Act an officer of an association must not improperly use their position to-

- a) gain an advantage for the officer or another person; or
- b) cause detriment to the Association.

**Note:** Under section 47 of the Act a person who obtains information because the person is, or has been, an officer of an association must not improperly use the information to-

- a) gain an advantage for the person or another person; or
- b) cause detriment to the Association.

### 36. The Chair

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

### 37. The Secretary

The Secretary has the following duties —

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

### 38. The Treasurer

The Treasurer has the following duties —

- (a) ensuring that any amounts payable to the Association are collected and issuing receipts for those amounts in the Association’s name;
- (b) ensuring that any amounts paid to the Association are credited to the appropriate account of the Association, as directed by the committee;
- (c) ensuring that any payments to be made by the Association that have been authorised by the committee or at a general meeting are made on time;
- (d) ensuring that the Association complies with the relevant requirements of Part 5 of the Act;
- (e) ensuring the safe custody of the Association’s financial records, financial statements and financial reports, as applicable to the Association;

- (f) if the Association is a tier 1 association, coordinating the preparation of the Association's financial statements before their submission to the Association's annual general meeting;
- (g) if the Association is a tier 2 association or tier 3 association, coordinating the preparation of the Association's financial report before its submission to the Association's annual general meeting;
- (h) providing any assistance required by an auditor or reviewer conducting an audit or review of the Association's financial statements or financial report under Part 5 Division 5 of the Act;
- (i) carrying out any other duty given to the Treasurer under these rules or by the committee.

**Notes: Committee members and 'personal material interest':**

**Note:** Under section 42 of the Act a member of the committee who has a material personal interest in a matter being considered at a committee meeting must:

- a) as soon as they become aware of that interest, disclose the nature and extent of their interest to the Committee;
- b) disclose the nature and extent of the interest at the next general meeting of the association

**Note:** Under section 42(3) of the Act this rule does not apply in respect of a material personal interest that exists only because the member-

- a) is an employee of the incorporated association; or
- b) is a member of a class of persons for whose benefit the association is established; or
- c) that the member has in common with all, or a substantial proportion of, the members of the Association.

**Note:** Under section 43 of the Act a member of the management committee who has a material personal interest in a matter being considered at a meeting of the management committee must not be present while the matter is being considered at the meeting or vote on the matter.

**Note:** Under section 42(6) of the Act the association must record every disclosure made by a committee member of a material personal interest in the minutes of the committee meeting at which the disclosure is made.

## Election of committee members and tenure of office

### 39. How members become Committee members

A member becomes a committee member if the member —

- (a) is elected to the committee at a general meeting; or
- (b) is appointed to the committee by the committee to fill a casual vacancy under rule 46.

**Note: Who cannot become a committee member**

Under section 39 of the Act the following persons must not, without leave of the Commissioner, accept an appointment or act as a member of a management committee of an association:

- a) a person who is, according to the Interpretation Act 1984 section 13D, a bankrupt or person whose affairs are under insolvency laws;
- b) a person who has been convicted, within or outside the State,
  - a. of an indictable offence in relation to the promotion, formation or management of a body corporate; or
  - b. an offence involving fraud or dishonesty punishable by imprisonment for a period of not less than three months; or
  - c. an offence under Part 4 Division 3 or section 127 of the Act

Section 39 only applies to a person who has been convicted of the above offences only for a period of 5 years from the time of the person's conviction, or if the conviction results in a term of imprisonment, from the time of the person's release from custody.

### 40. Nominations for committee membership

- (1) At least 30 days before an annual general meeting, the Secretary must send written notice to all the members —
  - (a) calling for nominations for election to the committee; and
  - (b) stating the date by which nominations must be received by the Secretary to comply with sub-rule (2).
- (2) Nominations of candidates for election as office holders of the Association or as general committee members must:
  - (a) be made in writing, signed by at least one member of the Society, and
  - (b) be accompanied by the written consent of the candidate (which may be endorsed on the written nomination), and
  - (c) be delivered to the Secretary at least five (5) days before the date fixed for the holding of the annual general meeting at which the election is to take place.

- (3) A member may nominate for any office or general committee member position.
- (4) The committee may from time to time approve a nomination form for election purposes.

#### **41. Election of office holders**

- (1) At the annual general meeting,
  - (a) the election of office holders will precede the election of general members
  - (b) a separate election must be held for each office of the Society.
- (2) If a person is elected to any office, their nomination to any other office or other committee membership is automatically withdrawn.
- (3) If no nomination has been received for an office by the opening of the meeting, the Chair may then receive nominations verbally from the floor.
- (4) If only one member has nominated for an office, the Chair must declare the member elected to the office.
- (5) If more than one member has nominated for an office, the members entitled to vote at the meeting must vote in such usual and proper manner as the Chair may direct.
- (6) If insufficient further nominations are received for any office, the office will be declared by the Chair to be a casual vacancy.
- (7) Any member who has nominated for an office may vote for themselves.
- (8) The term of each office holder begins with the conclusion of the annual general meeting at which the member was elected.
- (9) On election as Chair of the Society at an annual general meeting, a new Chair may choose to assume the role of presiding officer at the annual general meeting immediately but is not required to do so.

#### **42. Election of general committee members**

- (1) At the annual general meeting, the election of general committee members will follow the election of officer holders.
- (2) If insufficient nominations are received to fill all vacancies on the committee,
  - a. the candidates nominated are to be declared by the Chair to be elected, and
  - b. the Chair may then receive further nominations for the other vacancies verbally from the floor.
- (3) If insufficient further nominations are received, any vacancies remaining on the committee will be declared by the Chair to be casual vacancies.
- (4) If the number of nominations received is equal to the number of vacancies to be filled,
  - a. the persons nominated are to be declared by the Chair to be elected.
- (5) If the number of nominations received exceeds the number of vacancies to be filled,
  - a. the Chair is to conduct a ballot.
  - b. the ballot for the election of general members of the committee is to be conducted at the annual general meeting in such usual and proper manner as the Chair may direct.
- (6) A member who has nominated for the position of general member of the committee may vote for themselves.
- (7) The term of each general member of the committee begins with the conclusion of the annual general meeting at which the member was elected.

#### 43. Term of office

- (1) The term of office of a committee member begins —
  - (a) at the closure of an annual general meeting at which the member was elected or under rule 44(3)(b); or
  - (b) is appointed to fill a casual vacancy under rule 46.
- (2) Subject to rule 45, a committee member holds office until the conclusion of the next annual general meeting at which the member was elected.
- (3) A committee member may be re-elected.

#### 44. Resignation and removal from office

- (1) A committee member may resign from the committee by written notice given to the Secretary or, if the resigning member is the Secretary, given to the Chair.
- (2) The resignation takes effect —
  - (a) when the notice is received by the Secretary or Chair; or
  - (b) if a later time is stated in the notice, at the later time.
- (3) At a general meeting, the Association may by resolution —
  - (a) remove a committee member from office; and
  - (b) elect a member who is eligible under rule 15(4) to fill the vacant position.
- (4) A committee member who is the subject of a proposed resolution under sub-rule (3)(a) may make written representations (of a reasonable length) to the Secretary or Chair and may ask that the representations be provided to the members.
- (5) The Secretary or Chair may give a copy of the representations to each member or, if they are not so given, the committee member may require them to be read out at the general meeting at which the resolution is to be considered.

#### 45. When membership of committee ceases

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

- a) dies or otherwise ceases to be a member; or
- b) resigns from the committee or is removed from office under rule 44; or
- c) becomes ineligible to accept an appointment or act as a committee member under section 39 of the Act;
- d) becomes permanently unable to act as a committee member because of a mental or physical disability; or
- e) fails to attend 3 consecutive Committee meetings, of which the person has been given notice, without having notified the Committee that the person will be unable to attend.

*Note: where a person ceases to be a member of the association's committee section 41 of the Act requires that person to, as soon as practicable after their membership ceases, deliver to a member of the committee all of the relevant documents and records they hold pertaining to the management of the association's affairs.*

#### 46. Filling casual vacancies

- (1) The committee may appoint a member who is eligible under rule 15(4) to fill a position on the committee that —
  - (a) has become vacant under rule 45; or
  - (b) was not filled by election at the most recent annual general meeting or under rule 44(3)(b).
- (2) If the position of Secretary becomes vacant, the committee must appoint a member who is eligible under rule 15 to fill the position within 14 days after the vacancy arises.
- (3) Subject to the requirement for a quorum under rule 4, the committee may continue to act despite any vacancy in its membership.

- (4) If there are fewer committee members than required for a quorum under rule 4 the committee may act only for the purpose of —
  - (a) appointing committee members under this rule; or
  - (b) convening a general meeting.

#### 47. Validity of acts

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

#### 48. Payments to committee members

- (1) In this rule —
  - committee member* includes a member of a sub-committee;
  - committee meeting* includes a meeting of a sub-committee.
- (2) A committee member is entitled to be paid out of the funds of the Association for any out-of-pocket expenses for travel and accommodation properly incurred:
  - (a) in attending a committee meeting or
  - (b) in attending a general meeting; or
  - (c) otherwise in connection with the Association's business.

### Committee meetings

#### 49. Committee meetings

- (1) The committee must meet at least three (3) times in each year on the dates and at the times and places determined by the committee.
- (2) The date, time and place of the first committee meeting must be determined by the committee members as soon as practicable after the annual general meeting at which the committee members are elected.
- (3) Special committee meetings may be convened by the Chair or any two (2) committee members.
- (4) Meetings of the committee will:
  - (a) be open to any member of the Society to observe in person, and
  - (b) allow reasonable opportunities for observing members to participate in discussions
- (5) Members observing a meeting:
  - (a) must declare to the committee any potential or known conflict of interest or personal material interest as soon as they become aware of such an interest,
  - (b) are not eligible to vote on any motion before the committee, and
  - (c) must not in any way record or distribute the proceedings of the committee except with the prior consent of the committee.
- (6) The committee may at any time resolve to consider any item or items of business in a closed session that is not open to any observer.

*Note: On personal material interest, see Note following rule 38*

#### 50. Notice of committee meetings

- (1) Notice of each committee meeting must be given to each committee member at least 48 hours before the time of the meeting.
- (2) The notice must state the date, time and place of the meeting and must describe the general nature of the business to be conducted at the meeting.

- (3) Unless sub-rule (4) applies, the only business that may be conducted at the meeting is the business described in the notice.
- (4) Urgent business that has not been described in the notice may be conducted at the meeting if the committee members at the meeting unanimously agree to treat that business as urgent.

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

- (1) The Chair or, in the Chair's absence, the Deputy Chair must preside as Chair of each committee meeting.
- (2) If the Chair and Deputy Chair are absent or are unwilling to act as Chair of a meeting, the committee members at the meeting must choose one of them to act as Chair of the meeting.
- (3) The procedure to be followed at a committee meeting must be determined from time to time by the committee.
- (4) The order of business at a committee meeting may be determined by the committee members at the meeting.
- (5) A member or other person who is not a committee member may attend a committee meeting if invited to do so by the committee.
- (6) A person invited under sub-rule (5) to attend a committee meeting —
  - (a) has no right to any agenda, minutes or other document circulated at the meeting; and
  - (b) must not comment about any matter discussed at the meeting unless invited by the committee to do so; and
  - (c) cannot vote on any matter that is to be decided at the meeting; and
  - (d) must not in any way record or distribute the proceedings of the committee except with the prior consent of the committee.

#### **52. Use of technology to be present at committee meetings**

- (1) The presence of a committee member at a committee meeting need not be by attendance in person but may be by that committee member and each other committee member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.
- (2) A member who participates in a committee meeting as allowed under sub-rule (1) is taken to be present at the meeting and, if the member votes at the meeting, the member is taken to have voted in person.

#### **53. Quorum for committee meetings**

- (1) Subject to rule 46(4), no business is to be conducted at a committee meeting unless a quorum is present.
- (2) If a quorum is not present within 30 minutes after the notified commencement time of a committee meeting —
  - (a) in the case of a special meeting — the meeting lapses; or
  - (b) otherwise, the meeting is adjourned to the same time, day and place in the following week.
- (3) If —
  - (a) a quorum is not present within 30 minutes after the commencement time of a committee meeting held under sub-rule (2)(b); and
  - (b) at least 2 committee members are present at the meeting,

those members present are taken to constitute a quorum.

#### **54. Voting at committee meetings**

- (1) Each committee member present at a committee meeting has one vote on any question arising at the meeting.
- (2) A motion is carried if a majority of the committee members present at the committee meeting vote in favour of the motion.

- (3) If the votes are divided equally on a question, the Chair of the meeting has a second or casting vote.
- (4) A vote may take place by the committee members present indicating their agreement or disagreement or by a show of hands, unless the committee decides that a secret ballot is needed to determine a particular question.
- (5) If a secret ballot is needed, the Chair of the meeting must decide how the ballot is to be conducted.

## 55. Minutes of committee meetings

- (1) The committee must ensure that minutes are taken and kept of each committee meeting.
- (2) The minutes must record the following —
  - (a) the names of the committee members present at the meeting;
  - (b) the name of any person attending the meeting under rule 49(4) or sub-rule 51(5);
  - (c) the business considered at the meeting;
  - (d) any motion on which a vote is taken at the meeting and the result of the vote.
- (3) The minutes of a committee meeting must be entered in the Association's minute book within 30 days after the meeting is held.
- (4) The Chair must ensure that the minutes of a committee meeting are reviewed and signed as correct by —
  - (a) the Chair of the meeting; or
  - (b) the Chair of the next committee meeting.
- (5) When the minutes of a committee meeting have been signed as correct they are, until the contrary is proved, evidence that —
  - (a) the meeting to which the minutes relate was duly convened and held; and
  - (b) the matters recorded as having taken place at the meeting took place as recorded; and
  - (c) any appointment purportedly made at the meeting was validly made.

## Sub-committees and subsidiary offices

### 56. Sub-committees and subsidiary offices

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

### 57. Delegation to sub-committees and holders of subsidiary offices

- (1) In this rule —

*non-delegable duty* means a duty imposed on the committee by the Act or another written law.

- (2) The committee may, in writing, delegate to a sub-committee or the holder of a subsidiary office the exercise of any power or the performance of any duty of the committee other than —

- (a) the power to delegate; and
  - (b) a non-delegable duty.
- (3) A power or duty, the exercise or performance of which has been delegated to a sub-committee or the holder of a subsidiary office under this rule, may be exercised or performed by the sub-committee or holder in accordance with the terms of the delegation.
  - (4) The delegation may be made subject to any conditions, qualifications, limitations or exceptions that the committee specifies in the document by which the delegation is made.
  - (5) The delegation does not prevent the committee from exercising or performing at any time the power or duty delegated.
  - (6) Any act or thing done by a sub-committee or by the holder of a subsidiary office, under the delegation has the same force and effect as if it had been done by the committee.
  - (7) The committee may, in writing, amend or revoke the delegation.

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

### **58. Annual general meeting**

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

### **59. Special general meetings**

- (1) The committee may convene a special general meeting.
- (2) The committee must convene a special general meeting if at least 20% of the members require a special general meeting to be convened.
- (3) The members requiring a special general meeting to be convened must —

- (a) make the requirement by written notice given to the Secretary; and
  - (b) state in the notice the business to be considered at the meeting; and
  - (c) each sign the notice.
- (4) The special general meeting must be convened within 28 days after notice is given under sub-rule (3)(a).
- (5) If the committee does not convene a special general meeting within that 28 day period, the members making the requirement (or any of them) may convene the special general meeting.
- (6) A special general meeting convened by members under sub-rule (5) —
- (a) must be held within 3 months after the date the original requirement was made; and
  - (b) may only consider the business stated in the notice by which the requirement was made.
- (7) The Association must reimburse any reasonable expenses incurred by the members convening a special general meeting under sub-rule (5).

## 60. Notice of general meetings

- (1) The Secretary or, in the case of a special general meeting convened under rule 59(5), the members convening the meeting, must give to each member —
- (a) at least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting; or
  - (b) at least 14 days' notice of a general meeting in any other case.
- (2) The notice must —
- (a) specify the date, time and place of the meeting; and
  - (b) indicate the general nature of each item of business to be considered at the meeting; and
  - (c) if the meeting is the annual general meeting, include the names of the members who have nominated for election to the committee under rule 40; and
  - (d) if a special resolution is proposed —
    - (i) set out the wording of the proposed resolution as required by section 51(4) of the Act; and
    - (ii) state that the resolution is intended to be proposed as a special resolution; and
    - (iii) comply with rule 61(7).

## 61. Proxies

- (1) Subject to sub-rule (2), an ordinary member may appoint an individual who is an ordinary member as their proxy to vote and speak on their behalf at a general meeting.
- (2) An ordinary member may be appointed the proxy for not more than 5 other members.
- (3) The appointment of a proxy must be in writing and signed by the member making the appointment.
- (4) The member appointing the proxy may give specific directions as to how the proxy is to vote on their behalf.
- (5) If no instructions are given to the proxy, the proxy may vote on behalf of the member in any matter as the proxy sees fit.
- (6) If the committee has approved a form for the appointment of a proxy, the member may use that form or any other form —
- (a) that clearly identifies the person appointed as the member's proxy; and
  - (b) that has been signed by the member.
- (7) Notice of a general meeting given to an ordinary member under rule 60 must —
- (a) state that the member may appoint an individual who is an ordinary member as a proxy for the meeting; and
  - (b) include a copy of any form that the committee has approved for the appointment of a proxy.

- (8) A form appointing a proxy must be given to the Secretary before the commencement of the general meeting for which the proxy is appointed.
- (9) A form appointing a proxy sent by post or electronically is of no effect unless it is received by the Association not later than 24 hours before the commencement of the meeting.

#### **62. Use of technology to be present at general meetings**

- (1) The presence of a member at a general meeting need not be by attendance in person but may be by that member and each other member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.
- (2) A member who participates in a general meeting as allowed under sub-rule (1) is taken to be present at the meeting and, if the member votes at the meeting, the member is taken to have voted in person.

#### **63. Presiding member and quorum for general meetings**

- (1) The Chair or, in the Chair's absence, the Deputy Chair must preside as chair of each general meeting.
- (2) If the Chair and Deputy Chair are absent or are unwilling to act as chair of a general meeting, the committee members at the meeting must choose one of them to act as chair of the meeting.
- (3) No business is to be conducted at a general meeting unless a quorum is present.
- (4) If a quorum is not present within 30 minutes after the notified commencement time of a general meeting —
  - (a) in the case of a special general meeting — the meeting lapses; or
  - (b) in the case of the annual general meeting — the meeting is adjourned to —
    - (i) the same time and day in the following week; and
    - (ii) the same place, unless the Chair specifies another place at the time of the adjournment or written notice of another place is given to the members before the day to which the meeting is adjourned.
- (5) If —
  - (a) a quorum is not present within 30 minutes after the commencement time of an annual general meeting held under sub-rule (4)(b); and
  - (b) at least 2 ordinary members are present at the meeting,those members present are taken to constitute a quorum.

#### **64. Adjournment of general meeting**

- (1) The Chair of a general meeting at which a quorum is present may, with the consent of a majority of the ordinary members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- (2) Without limiting sub-rule (1), a meeting may be adjourned —
  - (a) if there is insufficient time to deal with the business at hand; or
  - (b) to give the members more time to consider an item of business.
- (3) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- (4) Notice of the adjournment of a meeting under this rule is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with rule 60.

#### **65. Voting at general meeting**

- (1) On any question arising at a general meeting —

- (a) subject to sub-rule (6), each ordinary member has one vote unless the member may also vote on behalf of a body corporate under sub-rule (2); and
  - (b) ordinary members may vote personally or by proxy.
- (2) An ordinary member that is a body corporate may, in writing, appoint an individual, whether or not the individual is a member, to vote on behalf of the body corporate on any question at a particular general meeting or at any general meeting, as specified in the document by which the appointment is made.
  - (3) A copy of the document by which the appointment is made must be given to the Secretary before any general meeting to which the appointment applies.
  - (4) The appointment has effect until —
    - (a) the end of any general meeting to which the appointment applies; or
    - (b) the appointment is revoked by the body corporate and written notice of the revocation is given to the Secretary.
  - (5) Except in the case of a special resolution, a motion is carried if a majority of the ordinary members present at a general meeting vote in favour of the motion.
  - (6) If votes are divided equally on a question, the Chair of the meeting has a second or casting vote.
  - (7) If the question is whether or not to confirm the minutes of a previous general meeting, only members who were present at that meeting may vote.
  - (8) For a person to be eligible to vote at a general meeting as an ordinary member, or on behalf of an ordinary member that is a body corporate under sub-rule (2), the ordinary member —
    - (a) must have been an ordinary member at the time notice of the meeting was given under rule 60; and
    - (b) must have paid any fee or other money payable to the Association by the member.

## 66. When special resolutions are required

- (1) A special resolution is required if it is proposed at a general meeting —
  - (a) to affiliate the Association with another body; or
  - (b) to request the Commissioner to apply to the State Administrative Tribunal under section 109 of the Act for the appointment of a statutory manager.

*Note: A special resolution is also required to make an alteration to this constitution, see rule 80*

- (2) Sub-rule (1) does not limit the matters in relation to which a special resolution may be proposed.

## 67. Determining whether resolution carried

- (1) In this rule —

*poll* means the process of voting in relation to a matter that is conducted in writing.

- (2) Subject to sub-rule (4), the Chair of a general meeting may, on the basis of general agreement or disagreement or by a show of hands, declare that a resolution has been —
  - (a) carried; or
  - (b) carried unanimously; or
  - (c) carried by a particular majority; or
  - (d) lost.
- (3) If the resolution is a special resolution, the declaration under sub-rule (2) must identify the resolution as a special resolution.

- (4) If a poll is demanded on any question by the Chair of the meeting or by at least 3 other ordinary members present in person or by proxy —
  - (a) the poll must be taken at the meeting in the manner determined by the Chair;
  - (b) the Chair must declare the determination of the resolution on the basis of the poll.
- (5) If a poll is demanded on the election of the Chair or on a question of an adjournment, the poll must be taken immediately.
- (6) If a poll is demanded on any other question, the poll must be taken before the close of the meeting at a time determined by the Chair.
- (7) A declaration under sub-rule (2) or (4) must be entered in the minutes of the meeting, and the entry is, without proof of the voting in relation to the resolution, evidence of how the resolution was determined.

## **68. Minutes of general meeting**

- (1) The Secretary, or a person authorised by the committee from time to time, must take and keep minutes of each general meeting.
- (2) The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- (3) In addition, the minutes of each annual general meeting must record —
  - (a) the names of the ordinary members attending the meeting; and
  - (b) any proxy forms given to the Chair of the meeting under rule 61(8); and
  - (c) the financial statements or financial report presented at the meeting, as referred to in rule 58(3)(b)(ii) or (iii); and
  - (d) any report of the review or auditor's report on the financial statements or financial report presented at the meeting, as referred to in rule 58(3)(b)(iv).
- (4) The minutes of a general meeting must be entered in the Association's minute book within 30 days after the meeting is held.
- (5) The Chair must ensure that the minutes of a general meeting are reviewed and signed as correct by —
  - (a) the Chair of the meeting; or
  - (b) the Chair of the next general meeting.
- (6) When the minutes of a general meeting have been signed as correct they are, in the absence of evidence to the contrary, taken to be proof that —
  - (a) the meeting to which the minutes relate was duly convened and held; and
  - (b) the matters recorded as having taken place at the meeting took place as recorded; and
  - (c) any election or appointment purportedly made at the meeting was validly made.

## **PART VII – FINANCIAL MATTERS**

### **69. Source of funds**

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

### **70. Control of funds**

- (1) The Association must open an account in the name of the Association with a financial institution from which all expenditure of the Association is made and into which all funds received by the Association are deposited.

- (2) Subject to any restrictions imposed at a general meeting, the committee may approve expenditure on behalf of the Association.
- (3) The committee may authorise the Treasurer to expend funds on behalf of the Association up to a specified limit without requiring approval from the committee for each item on which the funds are expended.
- (4) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the Association must be signed by —
  - (a) 2 committee members; or
  - (b) one committee member and a person authorised by the committee.
- (5) All funds of the Association must be deposited into the Association’s account within 5 working days after their receipt.

## 71. Financial statements and financial reports

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

**Note:** Under section 66 of the Act, an incorporated association must keep financial records that: -

- a) correctly record and explain its transactions and financial position and performance; and
- b) enable true and fair financial statements to be prepared in accordance with Part 5 Division 3 of the Act.

**Note:** Under section 67 of the Act, an incorporated association must retain its financial records for at least 7 years after the transactions covered by the records are completed.

## PART VIII – GENERAL MATTERS

### 72. By-laws

- (1) The Association may, by resolution at a general meeting, make, amend or revoke by-laws.
- (2) By-laws may —
  - (a) provide for the rights and obligations that apply to any classes of associate membership approved under rule 15; and
  - (b) impose restrictions on the committee’s powers, including the power to dispose of the association’s assets; and
  - (c) impose requirements relating to the financial reporting and financial accountability of the association and the auditing of the association’s accounts; and
  - (d) provide for any other matter the association considers necessary or convenient to be dealt with in the by-laws.
- (3) A by-law is of no effect to the extent that it is inconsistent with the Act, the regulations or these rules.

(4) Without limiting sub-rule (3), a by-law made for the purposes of sub-rule (2)(c) may only impose requirements on the Association that are additional to, and do not restrict, a requirement imposed on the Association under Part 5 of the Act.

(5) At the request of a member, the Association must make a copy of the by-laws available for inspection by the member.

**Note:** *A by-law must be consistent with the Act, the regulations and these rules. The rules of an association bind the association and the members as an enforceable contract between them. By-laws may not have that status. Therefore, the use of by-laws should be reserved for more procedural or administrative matters.*

### 73. Executing documents and the Common Seal

(1) The Association will have a Common Seal on which at least the name of the Association must appear in legible characters.

(2) The Association may execute a document with its Common Seal if the document is signed by

- (a) two (2) committee members; or
- (b) one committee member and a person authorised by the committee.

(3) A document may only be sealed with the Common Seal by the authority of the committee and in the presence of

- (a) two (2) committee members; or
- (b) one committee member and a person authorised by the committee,
- (c) and in either case each of them is to sign the document to attest that the document was sealed in their presence.

(4) The Secretary must make a written record of each use of the Common Seal.

(5) The Common Seal must be kept in the custody of the Secretary or another committee member authorised by the committee.

### 74. Giving notices to members

(1) In this rule —

**recorded** means recorded in the Register of Members.

(2) A notice or other document that is to be given to a member under these rules is taken not to have been given to the member unless it is in writing and —

- (a) delivered by hand to the recorded address of the member; or
- (b) sent by prepaid post to the recorded postal address of the member; or
- (c) sent by facsimile or electronic transmission to an appropriate recorded number or recorded electronic address of the member.

### 75. Custody of books and securities

(1) Subject to sub-rule (2), the books and any securities of the Association must be kept in the Secretary's custody or under the Secretary's control.

(2) The financial records and, as applicable, the financial statements or financial reports of the Association must be kept in the Treasurer's custody or under the Treasurer's control.

(3) Sub-rules (1) and (2) have effect except as otherwise decided by the committee.

(4) The books of the Association must be retained for at least 7 years.

## 76. Record of office holders

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

**Note:** Section 58 of the Act -

- a) sets out the details of the record that an incorporated association must maintain of the committee members and certain others; and
- b) provides for members to inspect, make a copy of or take an extract from the record; and
- c) prohibits a person from disclosing information in the record except for authorised purposes

**Note:** Under section 58 of the Act an association must maintain a record of —

- a) the names and addresses of the persons who are members of its management committee; or hold other offices of the association provided for by its rules;
- b) the name and address of any person who is authorised to use the common seal of the association (if it has a common seal); and
- c) the name and address of any person who is appointed or acts as trustee on behalf of the association.

**Note:** Under section 58 of the Act the association must, upon the request of a member of the association, make available the record for the inspection of the member. The member may make a copy of or take an extract from the record but does not have a right to remove the record for that purpose.

## 77. Inspection of records and documents

(1) Sub-rule (2) applies to a member who wants to inspect —

- (a) the Register of Members under section 54(1) of the Act; or
- (b) the record of the names and addresses of committee members, and other persons authorised to act on behalf of the Association, under section 58(3) of the Act; or
- (c) any other record or document of the association.

(2) The member must contact the Secretary to make the necessary arrangements for the inspection.

(3) The inspection must be free of charge.

(4) If the member wants to inspect a document that records the minutes of a committee meeting, the right to inspect that document is subject to any decision the committee has made about minutes of committee meetings generally, or the minutes of a specific committee meeting, being available for inspection by members.

(5) The member may make a copy of or take an extract from a record or document referred to in sub-rule (1)(c) but does not have a right to remove the record or document for that purpose.

(6) The member must not use or disclose information in a record or document referred to in sub-rule (1)(c) except for a purpose —

- (a) that is directly connected with the affairs of the Association; or
- (b) that is related to complying with a requirement of the Act.

**Note:** Sections 54(2) and 58(4) of the Act provide for the making of copies of, or the taking of extracts from, the register referred to in sub-rule 77(1)(a) and the record referred to in sub-rule 77(1)(b).

## 78. Publication by committee members of statements about Association business prohibited

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

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

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

(1) In this rule —

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

- (a) the debts and liabilities of the Association; and
  - (b) the costs, charges and expenses of winding up or cancelling the incorporation of the Association,
- but does not include books relating to the management of the Association.
- (2) On the cancellation of the incorporation or the winding up of the Association, its surplus property must be distributed as determined by special resolution by reference to the persons mentioned in section 24(1) of the Act.
  - (3) Subject to sub-rule 2, in the event of the association being cancelled, wound up or dissolved, all assets that remain after such cancellation, winding up or dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes, which is charitable at law and which has rules prohibiting the distribution of its assets and income to its members.
  - (4) Subject to sub-rules 2 and 3, the books of the association are to be distributed to the Royal Western Australian Historical Society Inc.
  - (5) If the association is cancelled, wound up or dissolved or its endorsement as a deductible gift recipient is revoked (whichever occurs first), any surplus of the following assets shall be transferred to another organisation with similar objects, which is charitable at law, to which income tax deductible gifts can be made:
    - a) gifts of money or property for the principal purpose of the organisation
    - b) contributions made in relation to an eligible fundraising event held for the principal purpose of the organisation, and
    - c) money received by the organisation because of such gifts and contributions

**Note:** *Liabilities of the association - Under section 19 of the Act a member of the management committee, trustee or a member of the association is not liable in respect of the liabilities of the association. This does not apply to liabilities incurred by or on behalf of the association prior to incorporation.*

**Note:** *Section 24(1) of the Act sets out a provision that is implied in these rules describing the entities to which the surplus property of an incorporated association may be distributed on the cancellation of the incorporation or the winding up of the association. Part 9 of the Act deals with the winding up of incorporated associations, and Part 10 of the Act deals with the cancellation of the incorporation of incorporated associations.*

**Note:** *Under section 24(1) of the Act surplus property can only be distributed to one or more of the following:*

- a) an incorporated association;
- b) a company limited by guarantee that is registered as mentioned in the Corporations Act (Cth) section 150;
- c) a company holding a licence that continues in force under the Corporations Act (Cth) section 151;
- d) a body corporate that at the time of the distribution is the holder of a licence under the Charitable Collections Act 1946 (WA);
- e) a body corporate that:
  - a. is a member or former member of the incorporated association; and
  - b. at the time of the distribution of surplus property, has rules that prevent the distribution of property to its members;
- f) a trustee for a body corporate referred to in paragraph
- g) a co-operative registered under the Co-operatives Act 2009 (WA) that, at the time of the distribution of surplus property, is a non-distributing co-operative as defined in that Act.

## 80. Alteration of rules

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

**Note:** *Section 31 of the Act requires an incorporated association to obtain the Commissioner's approval if the alteration of its rules has effect to change the name of the association.*

**Note:** *Section 33 of the Act requires an incorporated association to obtain the Commissioner's approval if the alteration of its rules has effect to alter the objects or purposes of the association or the manner in which surplus property of the association must be distributed or dealt with if the association is wound up or its incorporation is cancelled.*

*Note: Amendments to the rules do not take effect until required documents are lodged with the Commissioner, even if the amendments do not require the approval of the Commissioner under section 31 or section 33. The required documents must be lodged within one month after the special resolution is passed.*

## 81. Symbols and Honours

- (1) The committee may recommend to a general meeting the adoption of any symbol or symbols as an emblem of the Society.
- (1) The committee may confer honours upon members and non-members to recognize:
  - a. support for the Society;
  - b. merit in historical research and history writing;
  - c. achievement in heritage conservation; or
  - d. any other matter related to the Society's objectives.
- (3) The committee may award prizes, medals, scholarships, bursaries, internships and other such assistance, whether financial or in-kind, to recognize and support the study of history.

## 82. Standards

- (1) The committee may from time to time adopt
  - a. codes of conduct or behavior that apply to relationships between members, including volunteers, when engaged in Society activities;
  - b. charters, guidelines, codes and the like developed by professional, industry or peak-body organisations to assist the Society in managing its activities; and
  - c. guidelines for or with respect to any matter for which the committee considers it is necessary or convenient for giving effect to this constitution or the objectives of the Society.

*Note: examples of documents that may be applicable to sub-rule 1(b) include the ICOM Code of Ethics and the ICOMOS Australia Burra Charter.*

- (2) Whether any such standards have been adopted, the committee will use its best endeavours to operate in accordance with best practice approaches to managing the Society's collections and other assets.
- (3) The committee will at all times use its best endeavours to ensure the Society conducts its affairs in an ethical manner.

## APPENDIX 1

### Act Requirements and Guidance Notes

<p><b>Guidance Note</b> – Information provided to the Commissioner under section 29(5) – This information is part of the rules of association and must be attached to the copy of the rules provided to members.</p> <p>The information provided to the Commissioner is inserted here:</p> <p>The name of the Association is: <b>Irwin Districts Historical Society Incorporated</b></p> <p>The objects of the Association are:</p> <ol style="list-style-type: none"><li>(1) To encourage the study and writing of the histories of the Irwin Districts;</li><li>(2) To maintain the identity of the Irwin Districts through the conservation of places of cultural and natural heritage significance, and the preservation of records and objects of artistic, cultural, or scientific significance, for the benefit of the community;</li><li>(3) To establish and maintain public libraries, public museums, public art galleries and other associated facilities, such as archives, reading rooms and open spaces, for the advancement of these objectives;</li><li>(4) To maintain the association as a registered charity for the purpose of advancing these objectives;</li><li>(5) To receive, including as a deductible gift recipient, and expend funds, including donations, for the express purpose of advancing these charitable objects;</li><li>(6) To acquire, hold, conserve, develop, deal with and dispose of real and intangible property solely for the benefit and support of these charitable objects;</li><li>(7) To apply the assets and income of the association solely to furthering its objectives and ensure no portion shall be distributed directly or indirectly to the members of the association except as genuine compensation for services rendered or expenses incurred on behalf of the association;</li><li>(8) To facilitate communication through publication by physical, electronic and other means, and otherwise promote the exchange of information among members and the public, relating to these objectives;</li><li>(9) To promote public interest in and an awareness and appreciation of Aboriginal histories in Irwin Districts and Westralian history;</li><li>(10) To encourage and facilitate research into family histories, place name histories, significant historical events, monuments, landscapes, environmental histories, maritime histories, multicultural histories, convict histories, biographies and all other aspects of historical diversity in the Irwin Districts;</li><li>(11) To found, subsidise or contribute to educational scholarships, awards and so on to promote these objectives;</li><li>(12) To join with other entities having similar objectives to pursue common aims; and</li><li>(13) To recognise and honour achievement in advancing these objectives or for outstanding contribution to the study, writing, illustration or performance of Irwin Districts, Westralian and other histories.</li></ol> <p>Any <b>eight</b> members personally present (being members entitled to vote under these rules at a general meeting) will constitute a quorum for the conduct of business at a general meeting.</p> <p>Any <b>four</b> committee members constitute a quorum for the conduct of the business of a committee meeting.</p> <p>The association's financial year will be the period of 12 months <b>commencing on the first day of July in each year and ending on the last day of June in the following year.</b></p>
<p><b>Act Requirements – Powers of Incorporated Association</b> - Under section 14 of the Act the Association may do all things necessary or convenient for carrying out its objects or purposes. Section 14(1)(a)-(g) provides particular examples.</p>
<p><b>Act Requirements-Membership</b> - Under sections 4 and 17 of the Act an association must always have at least 6 members with full voting rights.</p>
<p><b>Act Requirements – Liabilities of the association</b> - Under section 19 of the Act member of the management committee, trustee or a member of the association is not liable in respect of the liabilities of the association. This does not apply to liabilities incurred by or on behalf of the association prior to incorporation.</p>
<p><b>Guidance Note – Liability of Members</b> - A member is only liable for their own outstanding membership fees (if any) payable under rule 12.</p>
<p><b>Guidance Note – Eligibility for membership</b></p> <p>The by-laws may require members to hold specified educational, trade or professional qualifications.</p> <p>The association must comply with all legal and regulatory obligations that may apply to the association under any other law when assessing eligibility of an applicant for membership.</p>
<p><b>Guidance Note – Becoming a member</b> - The applicant immediately becomes a member, when rule 7 has been fulfilled, and is entitled to exercise all the rights and privileges of membership, including the right to vote (if applicable), and must comply with all of the obligations of membership under these rules.</p>
<p><b>Act requirement – Member to receive rules</b> – section 36(1)(b) of the Act provides that the association must give each person who become a member of the association of copy of the rules in force at the time their membership commences.</p>
<p><b>Guidance note – Format of rules provided</b> - It is acceptable for the association to provide a copy of the rules to new members by electronic transmission or providing the details for the website whether the rules may be downloaded. A hard copy must be provided if the member requests that the rules be provided in that manner.</p>
<p><b>Guidance Note - Voting rights of Members</b></p>

Each ordinary member of the Association has one vote at a general meeting of the Association.
Each ordinary member of the Association that is a body corporate has one vote at a general meeting of the Association.
<p><b>Act Requirements – Register of members</b></p> <p><i>Section 53 of the Act requires an association to maintain a register of its members and record in the register any change in the membership of the association. Any change to the register must be recorded within 28 days after the change occurs.</i></p> <p><i>Under section 53(2) of the Act the register of members must include each member's name and a residential, postal or email address.</i></p> <p><i>Under section 54 of the Act a member is entitled to inspect the register free of charge. The member may make a copy of, or take an extract from, the register but has no right to remove the register for that purpose.</i></p> <p><i>Under section 56 of the Act the management committee is authorised by to determine a reasonable charge for providing a copy of the register.</i></p>
<p><b>Guidance Note – Suspension or expulsion of a Member</b> - Once the committee has decided to suspend or expel a member under rule 15(5) the member is immediately suspended or expelled.</p>
<p><b>Guidance Note - Resolving disputes</b></p> <p>For the purposes of rules 17 and 18, the term <b>this Division</b> relates to rules 19 – 21.</p>
<p><b>Guidance Note - Mediation</b></p> <p>For the purposes of rule 22, the term <b>this Division</b> relates to rules 22-25.</p>
<p><b>Act Requirements – Persons who are not to be members of Committee</b></p> <p><i>Under section 39 of the Act the following persons must not, without leave of the Commissioner, accept an appointment or act as a member of a management committee of an association:</i></p> <ol style="list-style-type: none"> <li><i>a person who is, according to the Interpretation Act 1984 section 13D, a bankrupt or person whose affairs are under insolvency laws;</i></li> <li><i>a person who has been convicted, within or outside the State, of-</i></li> <li><i>an indictable offence in relation to the promotion, formation or management of a body corporate; or</i></li> <li><i>an offence involving fraud or dishonesty punishable by imprisonment for a period of not less than three months; or</i></li> <li><i>an offence under Part 4 Division 3 or section 127 of the Act</i></li> </ol> <p><i>Section 39 only applies to a person who has been convicted of the above offences only for a period of 5 years from the time of the person's conviction, or if the conviction results in a term of imprisonment, from the time of the person's release from custody.</i></p>
<p><b>Act Requirements - Duties of Committee Members and Officers</b></p> <p><i>Section 3 of the Act provides a definition of "officer". The duties provisions will apply to committee members and to those persons who have the ability to influence the management committee but who do not hold a formal committee position</i></p> <p><i>Under section 44 of the Act an officer of an association must exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise if that person- were an officer of the association in the association's circumstances; and occupied the office held by, and had the same responsibilities within the association as, the officer.</i></p> <p><i>Under section 45 of the Act an officer of an association must exercise his or her powers and discharge his or her duties- in good faith in the best interests of the Association; and for a proper purpose.</i></p> <p><i>Under section 46 an officer of an association must not improperly use his or her position to-</i></p> <ol style="list-style-type: none"> <li><i>gain an advantage for the officer or another person; or</i></li> <li><i>cause detriment to the Association.</i></li> </ol> <p><i>Under section 47a a person who obtains information because the person is, or has been, an officer of an association must not improperly use the information to-</i></p> <ol style="list-style-type: none"> <li><i>gain an advantage for the person or another person; or</i></li> <li><i>cause detriment to the Association.</i></li> </ol>
<p><b>Guidance note – Record of Office Holders</b> - detailed information about what must be included in the record of office holders is included under rule 21.</p> <p>Section 58 of the Act -</p> <ol style="list-style-type: none"> <li>sets out the details of the record that an incorporated association must maintain of the committee members and certain others; and</li> <li>provides for members to inspect, make a copy of or take an extract from the record; and</li> <li>prohibits a person from disclosing information in the record except for authorised purposes</li> </ol>
<p><b>Act Requirements – handing over documents and records</b> – <i>where a person ceases to be a member of the association's committee section 41 of the Act requires that person to, as soon as practicable after their membership ceases, deliver to a member of the committee all of the relevant documents and records they hold pertaining to the management of the association's affairs.</i></p>
<p><b>Act Requirements -Material Personal Interests of Committee Members</b></p> <p><i>Under section 42 of the Act a member of the committee who has a material personal interest in a matter being considered at a committee meeting must:</i></p> <ol style="list-style-type: none"> <li><i>as soon as he or she becomes aware of that interest, disclose the nature and extent of his or her interest to the Committee;</i></li> <li><i>disclose the nature and extent of the interest at the next general meeting of the association</i></li> <li><i>Under section 42(3) of the Act this rule does not apply in respect of a material personal interest</i></li> <li><i>that exists only because the member-</i></li> <li><i>is an employee of the incorporated association; or</i></li> <li><i>is a member of a class of persons for whose benefit the association is established; or</i></li> </ol>

<p><i>g) that the member has in common with all, or a substantial proportion of, the members of the Association.</i></p> <p><i>Under section 43 of the Act a member of the management committee who has a material personal interest in a matter being considered at a meeting of the management committee must not be present while the matter is being considered at the meeting or vote on the matter.</i></p> <p><i>Under section 42(6) of the Act the association must record every disclosure made by a committee member of a material personal interest in the minutes of the committee meeting at which the disclosure is made.</i></p>
<p><b>Act Requirements – Financial Statements and Financial Reports</b></p> <p>1. <i>Under section 66 of the Act, an incorporated association must keep financial records that: -</i></p> <ul style="list-style-type: none"> <li><i>(a) correctly record and explain its transactions and financial position and performance; and</i></li> <li><i>(b) enable true and fair financial statements to be prepared in accordance with Part 5 Division 3 of the Act.</i></li> </ul> <p>2. <i>Under section 67 of the Act, an incorporated association must retain its financial records for at least 7 years after the transactions covered by the records are completed.</i></p>
<p><b>Guidance Note – Status of By-laws -</b> A by-law must be consistent with the Act, the regulations and these rules. The rules of an association bind the association and the members as an enforceable contract between them. By-laws may not have that status. Therefore, the use of by-laws should be reserved for more procedural or administrative matters.</p>
<p><b>Act Requirements – Record of office holders</b></p> <p><i>Under section 58 of the Act an association must maintain a record of —</i></p> <ul style="list-style-type: none"> <li><i>a) the names and addresses of the persons who are members of its management committee; or hold other offices of the association provided for by its rules;</i></li> <li><i>b) the name and address of any person who is authorised to use the common seal of the association (if it has a common seal); and</i></li> <li><i>c) the name and address of any person who is appointed or acts as trustee on behalf of the association.</i></li> </ul> <p><i>Under section 58 of the Act the association must, upon the request of a member of the association, make available the record for the inspection of the member. The member may make a copy of or take an extract from the record but does not have a right to remove the record for that purpose.</i></p>
<p><b>Act Requirements – Inspection of Records and Documents</b></p> <p><i>Sections 54(2) and 58(4) of the Act provide for the making of copies of, or the taking of extracts from, the register referred to in rule 69(1)(a) and the record referred to in rule 69(1)(b).</i></p>
<p><b>Act Requirements – Distribution of surplus property</b></p> <p><i>Section 24(1) of the Act sets out a provision that is implied in these rules describing the entities to which the surplus property of an incorporated association may be distributed on the cancellation of the incorporation or the winding up of the association. Part 9 of the Act deals with the winding up of incorporated associations, and Part 10 of the Act deals with the cancellation of the incorporation of incorporated associations.</i></p> <p><i>Under section 24(1) of the Act surplus property can only be distributed to one or more of the following -</i></p> <ul style="list-style-type: none"> <li><i>(a) an incorporated association;</i></li> <li><i>(b) a company limited by guarantee that is registered as mentioned in the Corporations Act section 150;</i></li> <li><i>(c) a company holding a licence that continues in force under the Corporations Act section 151;</i></li> <li><i>(d) a body corporate that at the time of the distribution is the holder of a licence under the Charitable Collections Act 1946;</i></li> <li><i>(e) a body corporate that —</i></li> <li><i>(f) is a member or former member of the incorporated association; and</i></li> <li><i>(g) at the time of the distribution of surplus property, has rules that prevent the distribution of property to its members;</i></li> <li><i>(h) a trustee for a body corporate referred to in paragraph (e);</i></li> <li><i>(i) a co-operative registered under the Co-operatives Act 2009 that, at the time of the distribution of surplus property, is a non-distributing co-operative as defined in that Act.</i></li> </ul>
<p><b>Guidance Note – Alteration of Rules.</b></p> <p>Section 31 of the Act requires an incorporated association to obtain the Commissioner’s approval if the alteration of its rules has effect to change the name of the association.</p> <p>Section 33 of the Act requires an incorporated association to obtain the Commissioner’s approval if the alteration of its rules has effect to alter the objects or purposes of the association or the manner in which surplus property of the association must be distributed or dealt with if the association is wound up or its incorporation is cancelled.</p> <p>Amendments to the rules do not take effect until required documents are lodged with the Commissioner, even if the amendments do not require the approval of the Commissioner under section 31 or section 33. The required documents must be lodged within one month after the special resolution is passed.</p>