



## **RULES OF OPTOMETRY WESTERN AUSTRALIA INCORPORATED**

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# Rules of Optometry Western Australia

## 1 Name of Association

The name of the Association is Optometry Western Australia.

## 2 Exclusion of model rules

To the extent permitted by law, the sections or subsections of the Act referred to as the 'model rules', do not apply to the Association unless expressly made applicable to the Association by a provision of these Rules.

## 3 Definitions

Definitions for words or phrases which have special meanings in these Rules, and other guides to interpretation of these Rules, are set out in **rule 38**.

## 4 Structure

The structure of the Association consists of:

- (a) a Board of Directors; and
- (b) the Members of the Association.

## 5 Objects and powers

### 5.1 Objects

The Objects of the Association are:

- (a) to abide by the principals, and terms and conditions of the Memorandum of Understanding between the National Association and the Association as published and amended from time to time, and to ensure cooperation with other associations of optometrists in the various States and Territories of Australia in the promotion and operation of the National Association;
- (b) to observe, carry into effect and generally comply with the policy of the National Association as determined by resolution of any General Meeting, or of the national council, of the National Association;
- (c) to implement and carry into effect all resolutions of the National Association or the national council of the National Association insofar as such resolutions require any act, matter or thing to be done or performed within Western Australia or any State or Territory in which the Association operates;

- (d) to actively and with all due diligence carry out and perform all such duties within Western Australia or any State or Territory in which the Association operates as may be vested in or delegated to it by resolution of the National Association or the national council of the National Association;
- (e) to adhere to the roles and responsibilities that are outlined in any Memorandum of Understanding between the National Association and the Association;
- (f) to encourage the science of optometry and the practical application of its results;
- (g) to advance harmonious relations between Members and between Members and their employees or employers;
- (h) to promote, support, uphold and protect the character, status and interests of the profession of optometry and optometrists;
- (i) to promote public knowledge of eye and vision care;
- (j) to advance unity, fellowship, communication and co-operation between Members of the Association;
- (k) to promote the continuing education of optometrists;
- (l) to encourage, support and promote the lawful and ethical actions, endeavours and interests of Western Australian Optometrists.

## **5.2 Powers**

Subject to the Act, the Association may do all things necessary or convenient for carrying out its Objects or purposes in a lawful manner including the following activities:

- (a) in the Association's absolute discretion, to defend against legal proceedings that are in the opinion of the Association unjust or vexatious;
- (b) to subscribe money for charitable, benevolent, educational, public or useful Objects;
- (c) to borrow or raise and secure the repayment of money by mortgage charge or lien upon the whole or part of, the Association's property or assets (whether present or in the future) or in such other manner as the Association shall think fit;
- (d) to invest the moneys of the Association in such manner or upon such security as may from time to time be determined by the Board; and
- (e) to acquire, improve, manage, develop, lease, hire, mortgage, sell or otherwise dispose of or deal with any real and personal property.

## 6 Rules of the Association

### 6.1 Effect

These Rules bind every Member and the Association and each Member agrees to comply with these Rules.

### 6.2 Copies of the Rules to Members

When a person becomes a Member in accordance with **rule 8**, the Association will provide to that person, free of charge, a copy of these Rules.

### 6.3 Copy of Rules

The Association must keep a copy of the Rules in force from time to time.

### 6.4 Amendment of Rules

The Association may alter, rescind or add to these Rules by Special Resolution in accordance with the Act but not otherwise.

### 6.5 Lodgement with Commissioner

The Public Officer must lodge the required documents with the Commissioner within one month after the passing of the Special Resolution to amend the Rules, in accordance with the Act.

### 6.6 Date of effect

Subject to **rule 6.7**, an amendment to the Rules does not take effect until the required documents are lodged with the Commissioner under **rule 6.5**.

### 6.7 Changes to name or objects

An amendment to the Rules that changes or has the effect of changing:

- (a) the name of the Association; or
- (b) the Objects or purposes of the Association,

does not take effect until the required documents are lodged with the Commissioner under **rule 6.5** and the approval of the Commissioner is given.

## 7 Income and property of company

### 7.1 Limitation on application

The property and income of the Association must be applied solely towards promoting the Objects 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 promoting those Objects.

## **7.2 Payment in good faith**

Nothing in these Rules will prevent the payment in good faith of remuneration to any officers, employees or Members of the Association in return for any services actually rendered to the Association nor for goods supplied in the ordinary course of business, nor prevent the payment of interest (at a rate not exceeding the 180 day bank bill rate) on money borrowed from any such person or reasonable and proper rent for premises leased by any such person to the Association.

## **8 Admission to Membership**

### **8.1 Number of persons that can be Members of the Association**

The maximum number of Members of the Association is unlimited.

### **8.2 Membership**

The Association shall consist of all persons listed in the Register at the time that this document takes effect as the Rules of the Association and such other persons as may from time to time be admitted to Membership in accordance with these Rules.

### **8.3 Eligibility**

Subject to any other requirements for Membership as determined by the Board from time to time, Membership of the Association is open to persons who satisfy the description of a Member of the respective Membership classes contained in **rule 10.3 to 10.11** or other classes as approved by the Board from time to time.

### **8.4 Applications for Membership**

Every application for admission as a Member of the Association under any classification must:

- (a) be made to the Board in the form prescribed by the Board from time to time;
- (b) be accompanied by any written recommendations and evidence of fitness as the Board may from time to time deem necessary;
- (c) be accompanied by an amount on account of the Entrance Fee set by the Board in accordance with **rule 9.1** for admission as a Member of the Association; and
- (d) satisfy such other criteria for Membership of the Association as the Board requires.

### **8.5 Evaluation of Applications**

- (a) The Public Officer will upon receipt of an application for admission as a Member of the Association, notify all Members of the Association of the application (whether by way of newsletter, email transmission, on the Association's website or any other medium) and call for any objections to the application to be raised within 28 days of the notice.

- (b) The Board will consider and decide whether to approve or reject any Membership application. No application for Membership is to be dealt with until the first meeting after the meeting when the application is first received by the Board.
- (c) Applicants for Membership may be required by the Board to appear before the Board in person and/or supply any evidence of eligibility, or further information that the Board considers reasonably necessary, prior to the Board making a decision in relation to Membership.
- (d) The decision of the Board, as to whether any person applying to be admitted as a Member under any classification is, or is not, qualified, or has, or has not, fulfilled such conditions of these Rules as are applicable to his or her case, will be final and conclusive.
- (e) The Board may refuse to accept a Membership application if the Applicant does not meet the eligibility requirements referred to in **rules 8.3 and 8.4**, or has not applied for Membership in accordance with **rule 8.4**.
- (f) The Board may refuse to accept a Membership application even if the Applicant has lodged an application in accordance with **rule 8.4** and the Applicant complies with the eligibility requirements set out in **rule 8.3**.
- (g) As soon as practicable after the Board has made a decision under **rule 8.58.5(a)**, the Board must notify the Applicant of the outcome of their Membership application.

## **8.6 Recording Membership in the Register**

After a person becomes a Member in accordance with these Rules, the Public Officer must enter that person's name in the Register in accordance with any requirements set out in the Act, or if the Act does not stipulate any timeframe for entering a person's name in the Register, within 28 days of that person becoming a Member.

## **8.7 Notification of the National Association**

The Public Officer shall forward to the Board of the National Association, by the 31<sup>st</sup> day of July in each year, a certificate showing the number of Members under each classification of the Association who are financial Members as at 30 June of that year.

## **9 Entrance and Membership fees**

### **9.1 Entrance fees**

The Board may from time to time determine the amount of the Entrance Fee, if any, to be paid by a person upon becoming a Member. The Entrance Fee may vary between classes of Members, as determined by the Board from time to time.

## **9.2 Membership Fee**

The Board will set or vary the annual Membership fee payable by each Member, or each class of Member, for his or her Membership to the Association at such times, in such manner and in such amounts as the Board thinks fit in its absolute discretion. The Membership Fee may vary between classes of Members, as determined by the Board from time to time.

## **9.3 Levy of Membership fees**

The Association's Financial Year shall commence on the first day of July in each year. Unless exempted by the Board, each Member must pay the applicable Membership Fee for the period commencing 1 July each year and expiring on 30 June the next year at such times and in such manner as determined by the Board.

## **9.4 Payment of fees by new Members**

The first Membership Fee payable by Members who are admitted as Members after the date on which this document comes into effect as the Rules of the Association will be payable in accordance with **rule 9.3**, except that the date for the payment of the first Membership Fee shall be such date as is set by the Board.

## **9.5 Suspension of rights of Member**

Without prejudice to any of the remedies available to the Association under **rule 12**, a Member's rights derived by virtue of its Membership of the Association shall be immediately suspended if:

- (a) the Membership Fee payable by that Member remains unpaid for 28 days after it becomes due under **rule 9.3** or **rule 9.4**;
- (b) the Board passes a resolution that a notice of default be issued to the Member requiring the Member to remedy the default, and directs the Public Officer to issue that notice on behalf of the Association;
- (c) the Public Officer issues the notice of default to the Member in accordance with that resolution and direction; and
- (d) the Member fails to remedy the default in accordance with the notice of default within 7 days of receipt of the notice,

and will only be reinstated on payment in full of the Membership Fee the failure of which to pay has resulted in the suspension.

## **10 Rights and responsibilities of Members**

### **10.1 Compliance with policies**

Each Member undertakes and agrees with the Association that so long as the person is a Member of the Association he or she will:

- (a) observe, carry into effect and comply with the policies, procedures, by-laws, codes of conduct and rules of the Association as determined by the Board or by the Members in General Meeting; and
- (b) implement and carry into effect all resolutions of the Board or of the Members in General Meeting insofar as such resolutions require any act, matter or thing to be done or performed by that Member.

## **10.2 Membership and classes of Members**

Subject to **rule 10.12**, the Association may consist of Full Members, Part-time Members, Academic Members, Immediate Graduate Members, Recent Graduate Members, Life Members, Minimal Practice Members, Student Members, Retired Members and other Membership classes that are approved by the Board.

## **10.3 Full Members**

- (a) A Full Member shall be a person registered to practice optometry in Western Australia:
  - (i) whose primary place of practice is located within Western Australia;
  - (ii) who is practicing optometry for 16 hours or more per week in Western Australia; and
  - (iii) who has been duly accepted to Membership in accordance with these Rules.
- (b) A Full Member shall have all rights, privileges and responsibilities of Membership including the right to attend meetings, to be counted in a quorum, to vote and if elected in accordance with these Rules, to hold office in the Association and also the right to be counted in the Association's voting strength at meetings of the National Association.
- (c) A Full Member shall pay to the Association such subscriptions, dues, national Membership Fees, professional indemnity premiums and other funds as the Association shall from time to time prescribe.

## **10.4 Part-Time Member**

- (a) A Part-time Member shall be a person registered to practice optometry in Western Australia:
  - (i) whose primary place of practice is located within Western Australia;
  - (ii) who is practicing optometry for more than 4 hours per week but less than 16 hours per week in Western Australia; and
  - (iii) who has been duly accepted to Membership in accordance with these Rules.

- (b) A Part-time Member shall have all rights, privileges and responsibilities of Membership including the right to attend meetings, to be counted in a quorum, to vote and if elected in accordance with these Rules, to hold office in the Association and also the right to be counted in the Association's voting strength at meetings of the National Association.
- (c) A Part-time Member shall pay to the Association such subscriptions, dues, national Membership Fees, professional indemnity premiums and other funds as the Association shall from time to time prescribe.

#### **10.5 Immediate Graduate Member**

- (a) An Immediate Graduate Member shall be a person registered to practice optometry in Western Australia during the period between the completion of his or her optometry qualification and the 30th June immediately following the completion of that qualification and who has been duly accepted to Membership in accordance with these Rules.
- (b) An Immediate Graduate Member shall have all rights, privileges and responsibilities of Membership including the right to attend meetings, to be counted in a quorum, to vote and if elected in accordance with these Rules, to hold office in the Association and also the right to be counted in the Association's voting strength at meetings of the National Association.
- (c) An Immediate Graduate Member shall pay to the Association such subscriptions, dues, national Membership Fees, professional indemnity premiums and other funds as the Association shall from time to time prescribe.

#### **10.6 Recent Graduate Member**

- (a) A Recent Graduate Member shall be a person registered to practice optometry in Western Australia:
  - (i) who is practicing optometry in Western Australia for their first year after the 30th of June following their completion of their optometry qualification; and
  - (ii) who has been duly accepted to Membership in accordance with these Rules.
- (b) A Recent Graduate Member shall have all rights, privileges and responsibilities of Membership including the right to attend meetings, to be counted in a quorum, to vote and if elected in accordance with these Rules, to hold office in the Association and also the right to be counted in the Association's voting strength at meetings of the National Association.
- (c) A Recent Graduate Member shall pay to the Association such subscriptions, dues, national Membership Fees, professional indemnity premiums and other funds as the Association shall from time to time prescribe.

## **10.7 Minimal Practice Member**

- (a) A Minimal Practice Member shall be a person who is registered to practice optometry in Western Australia:
  - (i) who is practicing optometry in Western Australia for up to 4 hours per week, or is not practicing optometry in Australia for one or more of a variety of reasons such as maternity leave, study leave, overseas travel and sick leave; and
  - (ii) who has been duly accepted to Membership in accordance with these Rules.
- (b) A Minimal Practice Member shall have the right to receive notices of, and be present at, meetings of the Association, but not to be counted in a quorum or to vote at those meetings or hold office in the Association, and shall not be counted in the voting strength of the Association at meetings of the National Association.
- (c) A Minimal Practice Member shall pay to the Association such subscriptions, dues, national Membership fees, professional indemnity premiums and other funds as the Association shall from time to time prescribe.

## **10.8 Academic Member**

- (a) An Academic Member shall be a person eligible for registration to practice optometry in Western Australia;
  - (i) who is engaged in full-time research, teaching or both and, if they practice optometry at all, they do so for no more than 16 hours per week;
  - (ii) whose primary place of employment or practice is located within Western Australia; and
  - (iii) who has been duly accepted to Membership in accordance with these Rules.
- (b) An Academic Member shall have all rights, privileges and responsibilities of Membership including the right to attend meetings, to be counted in a quorum, to vote and if elected in accordance with these Rules, to hold office in the Association and also the right to be counted in the Association's voting strength at meetings of the National Association.
- (c) An Academic Member shall pay to the Association such subscriptions, dues, national Membership Fees, professional indemnity premiums and other funds as the Association shall from time to time prescribe.

## **10.9 Life Member**

- (a) A Life Member must be a person who is or who has been an optometrist:

- (i) whom the Association has resolved to honour for long or distinguished service to the profession of optometry; or
  - (ii) whom another division of the National Association has resolved to honour for long or distinguished service to the profession of optometry, and whose principal place of residence or practice has moved to Western Australia.
- (b) For the avoidance of doubt, at any given point in time a person may only be a Life Member of one division of the National Association.
  - (c) A Life Member will, at the discretion of the Board, be exempt from levies and dues except contributions to cover his or her share of congresses and other gatherings.
  - (d) The Life Member, or the Association on his or her behalf, must pay the appropriate professional indemnity premium to the National Association.
  - (e) Subject to **rule 10.910.9(f)**, a Life Member has all rights, privileges and responsibilities of Membership including the right to attend meetings, to be counted in a quorum, to vote and if elected in accordance with these Rules, to hold office in the Association and also the right to be counted in the Association's voting strength at meetings of the National Association.
  - (f) A Life Member shall not be eligible for appointment as a representative of the Association at meetings of the National Association.

#### **10.10 Student Member**

- (a) A Student Member shall be a person:
  - (i) who is undertaking an optometry qualification in Western Australia, the successful completion of which will mean that they will be eligible for registration to practice optometry in Western Australia; and
  - (ii) who has been duly accepted to Membership in accordance with these Rules.
- (b) A Student Member shall have the right to receive notices of, and be present at, meetings of the Association, but not to be counted in a quorum or to vote at those meetings or hold office in the Association, and shall not be counted in the voting strength of the Association at meetings of the National Association.
- (c) A Student Member shall pay to the Association such subscriptions, dues, national Membership Fees, professional indemnity premiums and other funds as the Association shall from time to time prescribe.

#### **10.11 Retired Member**

- (a) A Retired Member shall be a person who is not deriving any income from, or engaging in, the practice or teaching of optometry in Australia, who has

therefore retired from practising optometry in Australia, and who has been duly accepted to Membership in accordance with these Rules.

- (b) A Retired Member shall have the right to receive notices of, and be present at, meetings of the Association, but not to be counted in a quorum or to vote at those meetings or hold office in the Association, and shall not be counted in the voting strength of the Association at meetings of the National Association.
- (c) A Retired Member shall pay to the Association such subscriptions, dues, national Membership Fees, professional indemnity premiums and other funds as the Association shall from time to time prescribe.

#### **10.12 Calculation of hours per week**

For the purposes of this **rule 10**, 'hours per week' is calculated as the average number of hours per week that a person practises optometry over a year, or if the relevant period is less than a year, over that period.

#### **10.13 Rights and Benefits**

The Board may from time to time determine the rights, benefits and restrictions for each class of Membership referred to in **rule 10.2** (including, cancelling a class of Membership and determining the rights, benefits and restrictions that relate to Members of cancelled classes of Membership) or varying the rights, benefits and restrictions set out in **rules 10.3 to 10.11** in relation to a class of Membership).

#### **10.14 Rights and Privileges of Members are Personal**

The rights and privileges of each Member are personal to the Member and will not be transferable by the Member's own act or by the operation of law.

### **11 Cessation of Membership**

#### **11.1 Termination of Membership**

A Member immediately ceases to be a member of the Association:

- (a) if the Member dies;
- (b) if the Member resigns by giving the Public Officer not less than 28 days written notice of resignation. The resignation of the Member will be immediately effective at the end of the notice period as set out in the notice of resignation;
- (c) if the Member's Membership is forfeited, or the Member is expelled, under **rule 12.1**; or
- (d) on the dissolution or liquidation of the Association.

#### **11.2 Procedure on termination**

Upon cessation of a Member's Membership pursuant to **rule 11.1**, the Public Officer shall:

- (a) note on the Register the date the person ceased to be a Member and the reason why the person ceased to be a Member; and
- (b) where necessary to fulfil its obligations to the National Association, notify the National Association in writing of that date.

### **11.3 No claims**

A Member whose Membership is terminated or ceases will not make any claim, monetary or otherwise, on the Association, its funds or property except as a creditor of the Association.

### **11.4 No representations as to Membership**

Any person who for any reason ceases to be a Member must no longer represent themselves in any manner as being a Member of the Association.

## **12 Disciplinary proceedings against Members**

### **12.1 Board may discipline a Member**

The Board may expel, suspend, fine or otherwise discipline a Member (**Defaulting Member**) if, in the opinion of the Board, the Defaulting Member:

- (a) has refused, neglected or failed to comply with these Rules; or
- (b) has conducted themselves in a way unbecoming or detrimental to the interests of the Association;
- (c) is, or has been, convicted of a felony or misdemeanour or has been declared by any Court of competent jurisdiction to have committed fraud;
- (d) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under laws relating to mental health;
- (e) fails to pay the Membership Fee in accordance with **rule 9.2**;
- (f) advertises in a manner that the Board considers, acting reasonably, to be in breach of any laws (for example laws relating to registration as a professional and trade practices laws), or any guidelines, policies, practice standards issued from time to time by a division of the Association, the National Association or any other body having appropriate jurisdiction;
- (g) engages in conduct (whether by act or omission) which may injure or harm the reputation or standing of the Optometric profession or the Association; or
- (h) allows any person who is not registered to practice optometry in the State or Territory in which the Member practices optometry, to practice in his name or as his substitute.

## 12.2 Board meeting

- (a) The Board must hold a meeting to decide whether to suspend, expel, fine or otherwise discipline a Defaulting Member.
- (b) The Public Officer must, not less than 28 days before the Board meeting referred to in **rule 12.212.2(a)**, give written notice to the Defaulting Member:
  - (i) of the proposed disciplinary measures and the grounds on which those measures are based;
  - (ii) of the date, place and time of the Board meeting;
  - (iii) that the Defaulting Member may attend the Board meeting and be accompanied by another person who must not be an Australian legal practitioner (unless the proposed disciplinary measures include expulsion or suspension and the prior written consent of the Board has been obtained); and
  - (iv) that the Defaulting Member, or where applicable, the Defaulting Member's legal representative, may address the Board at the meeting and will be given an opportunity to state the Defaulting Member's case orally, or in writing, or both.
- (c) At the Board meeting, the Board must:
  - (i) give the Defaulting Member, or where applicable, the Defaulting Member's legal representative, a full and fair opportunity to state the Defaulting Member's case orally;
  - (ii) give due consideration to any written statement submitted by the Defaulting Member; and
  - (iii) determine whether or not the Defaulting Member should be disciplined in the manner proposed, and if the proposed disciplinary measure is suspension, the period that the Member should be suspended from Membership.
- (d) If the Board decides to suspend or expel the Defaulting Member under **rule 12.212.2(c)(iii)**, the Defaulting Member is immediately suspended or expelled from Membership of the Association.
- (e) The Public Officer must inform the Defaulting Member in writing of the decision of the Board, within seven days of the Board meeting.

## 12.3 When a Member is suspended

- (a) If a Defaulting Member's Membership is suspended under rule **12.212.2(c)(iii)**, the Public Officer must record in the Register:
  - (i) the name of the Defaulting Member;
  - (ii) the date on which the suspension takes effect;

- (iii) the length of the suspension as determined by the Board under rule **12.212.2(c)(iii)**; and
  - (iv) the reason for suspension.
- (b) A Member whose Membership has been suspended under rule **12.212.2(c)(iii)** cannot exercise any rights or privileges of Membership, including voting rights, during the period of suspension.
- (c) Upon the expiry of the period of a Defaulting Member's suspension, the Public Officer must record in the Register that the Defaulting Member is no longer suspended.

## **12.4 Right of Appeal**

If a Defaulting Member is suspended or expelled under rule **12.212.2(c)(iii)**, the person may appeal the Board's decision within 14 days of receiving the Board's decision by lodging a written application under rule **14**.

## **12.5 Reinstatement**

If the Board's decision to suspend or expel a Defaulting Member is revoked under these Rules, any act performed by the Board or Members in General Meeting during the period that the Member was suspended or expelled from Membership under rule **12.212.2(d)** is deemed to be valid, notwithstanding the Member's inability to exercise their rights or privileges of Membership, including voting rights, during that period.

# **13 Membership Register**

## **13.1 Register of Members**

- (a) The Public Officer or a person authorised by the Board from time to time must make sure that the Register is up to date in accordance with the Act and the details of former Members are kept for at least 7 years.
- (b) The Register must contain:
- (i) the full name of each Member;
  - (ii) the postal or residential address of each Member or;
  - (iii) the email address of each Member or;
  - (iv) information, by means of which contact can be made with the Member, that is prescribed for the purposes of this rule **13.1**;
  - (v) the date on which the Member became a Member of the Association;
  - (vi) if applicable, the date and reason for the Membership ending and;
  - (vii) any other details the Board decides.

- (c) Any change in Membership of the Association must be recorded in the Register within 28 days after the change occurs.
- (d) A Member must inform the Public Officer of any change in their details that are held in the Register within 14 days of the change.
- (e) The Register must be kept and maintained at the Office or at such other place as the Board decides.

### **13.2 Inspecting the Register**

- (a) Any Member is able to inspect the Register free of charge, at such time and place as is mutually convenient to the Association and the Member.
- (b) A Member must contact the Public Officer to request to inspect the Register.
- (c) The Member may copy by hand details from the Register but has no right to remove the Register for that purpose.

### **13.3 Copy of the Register**

- (a) A Member may request a copy of the Register in accordance with the Act.
- (b) If the Member satisfies the Board that the purpose of obtaining a copy of the Register is directly connected with the affairs of the Association, then a copy of the Register must be given to the Member.
- (c) The Association may charge a fee to the Member for providing a copy of the Register, in the amount to be determined by the Board from time to time.
- (d) If the Board denies a Member's request for a copy of the Register, a Member may appeal the decision under **rule 14**.

### **13.4 When Using the Information in the Register is Prohibited**

A Member must not use or disclose the information on the Register:

- (a) to gain access to information that another Member has deliberately denied them (for example, in the case of social, family or legal differences or disputes);
- (b) to contact or send material to the Association or another Member for the purpose of advertising for political, religious, charitable or commercial purposes; or
- (c) for any other purpose unless the use of the information is approved by the Association and for a purpose that is directly connected with the affairs of the Association, or related to administering the Act.

## 14 Resolving disputes

### 14.1 Disputes arising under the Rules

- (a) This **rule 14** applies to:
  - (i) disputes between Members; or
  - (ii) disputes between the Association and one or more Members, under or relating to these Rules.
- (b) In this rule 'Member' includes any person who was a Member of the Association not more than six months before the dispute occurred, even if the person is no longer a Member of the Association.
- (c) 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.
- (d) If the dispute has not been resolved within the 14 days required under **rule 14.1(c)**, either party may initiate the dispute resolution procedure under this rule by giving written notice to the Public Officer of
  - (i) the parties to the dispute; and
  - (ii) the matters that are the subject of the dispute.
- (e) The Public Officer must convene a Board meeting within 28 days after the Public Officer receives written notice of the dispute under **rule 14.1(d)**, for the Board to determine the dispute.
- (f) The Public Officer must give each party to the dispute written notice of the Board meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.
- (g) If the dispute is
  - (i) between one or more Members and the Association and
  - (ii) any party to the dispute gives written notice to the Public Officer stating that the party -
    - (A) does not agree to the dispute being determined by the Board; and
    - (B) requests the appointment of a mediator under **rule 14.3**,the Board must not determine the dispute.
- (h) At the Board meeting to determine the dispute, all parties to the dispute must be given a full and fair opportunity to make written or oral (or both written and oral) submissions to the Board in relation to the dispute. The Board must:

- (i) give due consideration to any submissions so made; and
  - (ii) determine the dispute.
- (i) The Public Officer must inform the parties to the dispute of the Board's decision within 7 days after the Board meeting referred to in **rule 14.1(e)**.
  - (j) If any party to the dispute is dissatisfied with the Board's decision they may elect, within 14 days after receiving notice of the Board's determination under **rule 14.1(h)(ii)**, to give written notice to the Public Officer requesting the appointment of a mediator under **rule 14.3**.
  - (k) If notice is given under **rule 14.1(j)**, each party to the dispute is a party to the mediation.

## 14.2 Application of mediation

If written notice has been given to the Public Officer requesting the appointment of a mediator by:

- (a) a Member under **rule 12.4**; or
- (b) a party to a dispute under **rule 14.1(g)(ii)** or **14.1(j)**;

a mediator must be chosen or appointed under rule 14.3.

## 14.3 Appointment of mediator

- (a) The mediator must be a person chosen:
  - (i) if the appointment of a mediator was requested by a Member under **rule 12.4**, by agreement between the Member and the Board; or
  - (ii) if the appointment of a mediator was requested by a party to a dispute under **rule 14.1(g)** or **14.1(j)**, by agreement between the parties to the dispute.
- (b) If there is no agreement for the purposes of **rule 14.3(a)(i)** or **14.3(a)(ii)**, then, subject to **rules 14.3(c)** and **14.3(d)**, the Board must appoint the mediator.
- (c) The person appointed as mediator by the Board 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:
  - (i) a Member under **rule 12.4**; or
  - (ii) a party to a dispute under **rule 14.1(g)**; or
  - (iii) a party to a dispute under **rule 14.1(j)** and the dispute is between one or more Members and the Association.

- (d) The person appointed as mediator by the Board may be a Member or former Member of the Association but must not:
  - (i) have a personal interest in the matter that is the subject of the mediation; or
  - (ii) be biased in favour of or against any party to the mediation.

#### **14.4 Mediation process**

- (a) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- (b) 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.
- (c) In conducting the mediation, the mediator must
  - (i) give each party to the mediation every opportunity to be heard; and
  - (ii) allow each party to the mediation to give due consideration to any written statement given by another party; and
  - (iii) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- (d) The mediator cannot determine the matter that is the subject of the mediation.
- (e) 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.
- (f) The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.

#### **14.5 Inability to resolve disputes**

If a dispute cannot be resolved under the procedures set out in these Rules, any party to the dispute may apply to the State Administrative Tribunal to determine the dispute in accordance with the Act or otherwise at law.

### **15 Annual General Meeting – general requirements**

#### **15.1 Annual General Meeting**

- (a) Subject to the law, the Association must hold a General Meeting of Members at least once in every calendar year, at such time and place (which must be no later than 6 months after the end of the Financial Year or such longer period as may be allowed by the Commissioner) as may be determined by the Board. This General Meeting is called the '**Annual**

**General Meeting** or **'AGM'**. The Association must hold the Annual General Meeting in accordance with all applicable laws and these Rules.

- (b) If it is proposed to hold the Annual General Meeting more than six months after the end of the Association's Financial Year, the Public Officer must apply to the Commissioner for permission under section 50(3)(b) of the Act within four months after the end of the Financial Year.

## **15.2 Business of Annual General Meeting**

The business of the Annual General Meeting must include the following:

- (a) the confirmation of the minutes of the preceding Annual General Meeting and of any Special General Meeting held since that meeting if the minutes of that meeting have not yet been confirmed;
- (b) the Board's annual report on the Association's activities during the preceding Financial Year;
- (c) the receipt and consideration of-
  - (i) 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
  - (ii) 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;
  - (iii) 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.
- (d) presentation of any Solvency Statement required by the Act (if any);
- (e) if applicable, the election of office holders and Directors;
- (f) determination of the Directors' remuneration for the purposes of rule 26 and;
- (g) any other business of which notice has been given in accordance with these Rules.

## **15.3 Other General Meetings**

The Association may hold a General Meeting (that is not an Annual General Meeting) of the Members at any time, if the General Meeting is called and held in accordance all applicable laws and these Rules.

## **15.4 Special General Meetings**

- (a) The Board may at any time convene a Special General Meeting of the Association.

- (b) Subject to **rule 15.4(h)**, if requested to do so by not less than 20% of the aggregate number of Members entitled to vote at a General Meeting or when otherwise required by law, the Board must convene a Special General Meeting of the Association.
- (c) The Members requiring a Special General Meeting to be convened must:
  - (i) make the requirement by written notice given to the Public Officer or Public Officer Delegate; and
  - (ii) state in the notice the business to be considered at the meeting; and
  - (iii) each sign the notice.
- (d) The Special General Meeting must be convened within 28 days after notice is given under **rule 15.4(c)(i)** unless **rule 15.4(h)** applies.
- (e) If the Board does not convene a Special General Meeting within that 28 day period, the Members making the requirement (or any of them) may convene the Special General Meeting.
- (f) A Special General Meeting convened by Members under **rule 15.4(e)**:
  - (i) must be held within three months after the date the original requirement was made; and
  - (ii) may only consider the business stated in the notice by which the requirement was made.
- (g) The Association must reimburse any reasonable expenses incurred by Members convening a Special General Meeting under **rule 15.4(e)**.
- (h) If the Board receives a written request to convene a Special General Meeting under these Rules within the 60 day period before the Annual General Meeting of that Financial Year, the Association may deal with the matters set out in the request or the notice of appeal at the Annual General Meeting.

## 16 Notice of General Meetings

### 16.1 Notice Period

Subject to **rule 16.2**, the Board or in the case of a Special General Meeting convened under **rule 15.4(b)**, the Members convening the meeting, must give at least 28 days' notice of a General Meeting to the persons required to be given a notice under **rule 34**.

### 16.2 Change to Rules

Any notice of a General Meeting at which it is proposed to modify or repeal these Rules must be given to the persons required to be given a notice under **rule 34** at least 90 days prior to the meeting.

### **16.3 Form of Notice**

A notice calling a General Meeting:

- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the Technology that will be used to facilitate this;
- (b) must state the general nature of the meeting's business;
- (c) if a Special Resolution is to be proposed at the meeting – set out an explanation of the resolution; and
  - (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 19.8**; and
- (d) must specify a place, facsimile number and electronic address for the purposes of proxy appointment

### **16.4 Power to postpone or cancel meeting**

- (a) The Board may postpone or cancel any General Meeting whenever it thinks fit (other than a Special General Meeting).
- (b) The Board must give notice of the postponement or cancellation to all persons entitled to receive notices from the Association.

### **16.5 Proceedings Not Invalidated**

The failure or accidental omission to send a notice of a General Meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the General Meeting.

### **16.6 Motion of Business by a Member**

A Member wishing to bring before an AGM or any Special General Meeting any motion or business must give notice to the Public Officer no later than 14 days before the date set for the General Meeting and no such motion or business will be transacted or entertained at such meeting unless notice has been so given, or unless in the opinion of the majority of the Members personally present it should be considered provided in the case of new Rules or amendment of Rules notice must be given.

## 17 Conducting a General Meeting

### 17.1 Technology

- (a) The Association may hold a General Meeting of the Members at two or more places at the same time using any Technology that gives the Members, as a whole, a reasonable opportunity to participate in the General Meeting, or in any other manner permitted by the Act.
- (b) 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.
- (c) A Member who participates in a General Meeting as allowed under **rule 17.1(b)** 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.

### 17.2 Quorum

- (a) A quorum for a General Meeting must consist of no less than 3% of Members entitled to vote and be present at all times at the meeting.
- (b) Business cannot be transacted at a General Meeting of the Members unless a quorum is present.
- (c) If, after 30 minutes from the time set for the General Meeting, a quorum is not present, the meeting must be treated as adjourned to such day, time and place as the Chairman determines. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is automatically dissolved.

### 17.3 Chair

- (a) The President will be the Chair at every General Meeting.
- (b) If there is no President or if the President is not present 15 minutes after the time set for the General Meeting:
  - (i) the Directors present at the meeting must choose another Director to be chair of a General Meeting; or
  - (ii) if no Director is chosen under **rule 17.3(b)(i)** the Members present at the General Meeting must elect a Member (who is present at the meeting) to be chair for the General Meeting.

### 17.4 Adjournment

- (a) The Chair of a General Meeting may adjourn a General Meeting if there is insufficient time to deal with the business at hand or to give the Members more time to consider an item of business.

- (b) The Chair of a General Meeting may adjourn a General Meeting to another time and place if a majority of the Members who are entitled to vote and are present at the General Meeting consent to the adjournment.
- (c) The Chair of a General Meeting must adjourn the General Meeting if directed to do so by a majority of Members who are entitled to vote and are present at the General Meeting.
- (d) At a General Meeting which is resumed after an adjournment, the only business that may be dealt with is business left unfinished at the previous adjourned General Meeting.
- (e) It is not necessary to give notice of a General Meeting that is to be resumed after an adjournment, or the business to be transacted at that meeting, unless the meeting is adjourned for 30 days or more – in which case, notice must be given as if the meeting were an original General Meeting of the Members.

## 18 Votes at General Meetings

### 18.1 Vote

- (a) The Chair may, on the basis of general agreement or disagreement or by a show of hands, declare that a resolution has been:
  - (i) carried; or
  - (ii) carried unanimously; or
  - (iii) carried by a particular majority; or
  - (iv) lost.
- (b) If the resolution is a Special Resolution, the declaration under **rule (a)18.1(a)** must identify the resolution as a Special Resolution.
- (c) Each Member will have one vote at a General Meeting, except as otherwise provided in these Rules.
- (d) A resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution unless these Rules or the Act requires the resolution to be carried as a Special Resolution in which case the resolution must be carried in the manner required for a Special Resolution under these Rules.
- (e) All resolutions put to the vote of at a General Meeting must be decided either as a resolution under **rule 18.1(d)** or as a Special Resolution.
- (f) A Special Resolution must be passed at a General Meeting and be supported by the votes of not less than three-quarters of the Members who are eligible to cast a vote at the meeting, whether in person or by proxy.

- (g) The Chair may determine any dispute about the number of votes to which a Member is entitled and the admission or rejection of a vote. The Chair's determination, if made in good faith, will be final and conclusive.
- (h) A decision of a General Meeting may not be impeached or invalidated on the ground that a person voting at the meeting was not entitled to do so.

## **18.2 Casting vote**

In the case of an equality of votes, the Chair will have a second or casting vote.

## **18.3 Entitlement to vote**

A Member is not entitled to vote at a General Meeting if:

- (a) the Member's annual subscription is in arrears at the date of the meeting;  
or
- (b) the Member's membership is under suspension in accordance with the provisions of these Rules at the time the vote is taken (including if the vote is taken at a General Meeting reconvened following an adjournment).

## **18.4 Objections**

- (a) An objection to the qualification of a voter may only be raised at the meeting or adjourned meeting at which the voter tendered its vote.
- (b) An objection must be referred to the Chair of the meeting, whose decision is final.
- (c) A vote which the Chair does not disallow because of an objection is valid for all purposes.

## **19 Proxy**

### **19.1 Right to appoint**

A Member who is entitled to attend and cast a vote at a General Meeting may appoint a person as the Member's proxy to attend and vote for the Member at the meeting. The proxy must be a Member who is entitled to vote.

### **19.2 Proxy limitation**

A Member may be appointed the proxy for not more than five other Members.

### **19.3 Rights of proxy**

Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:

- (a) to speak at the General Meeting to which the proxy's appointment relates;
- (b) to vote on:

- (i) any amendment moved to the proposed resolution and on any motion that the proposed resolution not be put or any similar motion; and
- (ii) any procedural motion, including any motion to elect the Chair, to vacate the chair or to adjourn the General Meeting,

even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and

- (c) to vote on any motion before the General Meeting whether or not the motion is referred to in the appointment.

#### **19.4 Abstention of exercise of vote**

A proxy may vote or abstain as he or she chooses except where an appointment of the proxy directs the way the proxy is to vote on a particular resolution. Unless otherwise indicated when voting, if a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the same manner.

#### **19.5 Proxy limited to single meeting**

If a proxy is only for a single General Meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.

#### **19.6 Suspension**

A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.

#### **19.7 Revocation of proxy**

A proxy may be revoked at any time by notice in writing by the Member to the Association.

#### **19.8 Form**

An instrument appointing a proxy must be in the form set out in Schedule 2. An appointment of a proxy is valid if it is signed by the Member making the appointment, contains the information required under the Act (if any) for the valid appointment of a proxy and complies with the requirements set out in **rule 19.10**.

#### **19.9 Notice**

Notice of a general meeting given to a Member under **rule 16** must:

- (a) state that Members who have an entitlement to vote may appoint an individual who is entitled to vote as a proxy for the meeting; and
- (b) include a copy of the instrument appointing a proxy prescribed under **rule 19.8**.

#### **19.10 Lodgement of proxy**

- (a) The written appointment of a proxy or attorney must be received by the Association, at least 48 hours (unless otherwise specified in the notice of

meeting to which the proxy relates) before the time for holding the General Meeting or adjourned General Meeting at which the appointee proposes to vote.

- (b) The Association receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
  - (i) the Office;
  - (ii) a facsimile number at the Office; or
  - (iii) a place, facsimile number or electronic address specified for that purpose in the Notice of Meeting.
- (c) A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor revoked the proxy or power, unless any written notification of the death, unsoundness of mind or revocation was received by the Association before the relevant meeting or adjourned meeting.

## 20 Powers and composition of the Board

### 20.1 The Board

The governing body of the Association is to be called the Board and it has the authority to control and manage the affairs of the Association.

### 20.2 Number of Directors

There will not be less than eight Directors and no more than ten Directors unless the Association in General Meeting by Special Resolution changes the maximum number.

### 20.3 Composition

The Board is to consist of eight elected Directors and up to two appointed Directors:

- (a) the President elected in accordance with **rule 22.1**;
- (b) the Treasurer elected in accordance with **rule 22.1**;
- (c) six Directors elected in accordance with **rule 21**; and
- (d) any Directors (who need not be a Member of the Association) appointed in accordance with **rule 21.5**,

and must not consist of more than two people who are directly or indirectly engaged in or employed by the same optometry practice or group of optometry practices or in the same group of related companies or in the same franchise group (whether as a franchisor or a franchisee).

## **20.4 Eligibility**

- (a) A Director must be a natural person whose election will not constitute or cause a breach of **rule 20.3** and must not be a person to which section 39 of the Act applies.
- (b) Each Director must disclose to the Board all relevant business interests and any change to those business interests which bears upon the question of the Director's eligibility to be a Director.

## **20.5 Powers of the Board**

The Board may exercise all the powers of the Association and do all such acts and things which the Association is authorised or permitted to exercise and do and which are not by these Rules or by the Act directed or required to be exercised or done by the Association in General Meeting.

## **20.6 Powers to make By-laws**

The Board may make, vary, amend, enlarge, revoke or repeal by-laws, policies, rules, procedures, codes of conduct and charters which are not inconsistent with these Rules on all subjects not expressly reserved for the Association in General Meeting, including by-laws regarding the control of Members and the powers exercisable by Members and the prescribing of additional qualifications for admission as a Member.

## **20.7 Power of Board to appoint President**

Should any person elected as President or to other office of the Association resign during his or her term of office the Board may appoint a person to act in his or her place for the balance of the term of office.

## **20.8 Obligations of the Board**

- (a) The Board must take all reasonable steps to ensure the Association complies with its obligations under the Act and these Rules.
- (b) The Board must ensure that the Association has a Public Officer at all times as appointed under **rule 29.1**.
- (c) If required to do so by the Act, the Board must pass a Solvency Statement by resolution not more than 30 days before each AGM.
- (d) Any Solvency Statement prepared pursuant to **rule 20.8(c)** must:
  - (i) state that the Board has examined the affairs of the Association; and
  - (ii) show whether or not the Board is of the opinion there are reasonable grounds for believing that the Association will be able to pay or meet its debts and liabilities as and when they become payable.

## 20.9 Responsibilities of Directors

- (a) A Director must not use or disclose information derived from his or her position on the Board except for a purpose that is directly connected with the affairs of the Association, or is related to the administration of the Act.
- (b) **Rule 20.9(a)** does not apply with respect to a pecuniary interest that exists only by virtue of the fact that the Director:
  - (i) is an employee of the Association; or
  - (ii) belongs to a class of persons for whose benefit the Association is established.
- (c) The Public Officer must record every disclosure made by a Director under **rule 20.9(b)** in the minutes of the Board meeting at which the disclosure is made.
- (d) No Director shall make any public statement or comment or cause to be published any words or article concerning the business or the affairs of the Association unless the person is authorised by the Board to do so and such authority is recorded in the minutes of the Board meeting.

## 20.10 Obligation to act in good faith in the best interests of the Association

Each Director must act in good faith and in the best interests of the Association to the exclusion of the interests of all other persons.

## 21 Appointment and removal of Directors

### 21.1 Appointment of Directors

- (a) Each Director holding office at the time these Rules are adopted will continue to hold office as a Director until required to retire in accordance with **rule 21.1(c)**.
- (b) Directors are appointed to the Board by:
  - (i) election at an AGM;
  - (ii) appointed as a Director under **rule 21.5**; or
  - (iii) appointed to fill a casual vacancy under **rule 21.1(e)**.
- (c) At every Annual General Meeting after these Rules have been adopted, the four longest serving Directors since their last election (with the exception of Directors who are appointed by the Board) must retire from office. As between those Directors who have been in office an equal length of time, the Directors to retire will be determined by lot.
- (d) A Director who is required to retire at an Annual General Meeting under **rule 21.1(c)**, retains office until the conclusion of the meeting and is eligible for re-election. The offices which are vacant in accordance with

**rule 21.1(c)** are to be filled in accordance with the requirements for elections under **rules 21.2 to 21.4** inclusive.

- (e) If a Director (**departed Director**) ceases to be a Director for whatever reason (including by resignation, vacation of office or removal) before the departed Director is required to retire from office under **rule 21.1(c)**, the continuing Directors may appoint a person to fill that vacancy until the conclusion of the next AGM.

## **21.2 Nominating for Membership of the Board**

- (a) A Member who wishes to be elected as a Director at an AGM must be nominated by a Member and seconded by a Member as a candidate for election under this **rule 21.2**.
- (b) At the same time as the Board gives notice of the AGM in accordance with **rule 16**, and with that notice, the Public Officer must send a notice calling for nominations for election to the Board:
  - (i) in the form set out in **rule 21.2(c)**; and
  - (ii) specifying the date for the close of nominations (which will be seven days before the AGM).
- (c) The nomination for election must:
  - (i) be in writing in the form set out in Schedule 1 or in such other form as specified by the Board from time to time;
  - (ii) contain sufficient information in relation to the Member's business interests to enable the Board to determine whether the election of that Member to the Board would constitute a breach of **rule 20.3**; and
  - (iii) be delivered to the Public Officer on or before the date for the close of nominations.
- (d) A Member may only be nominated for one position on the Board prior to the Annual General Meeting.
- (e) If a nomination for election to the Board is not made in accordance with this **rule 21.2**, the nomination is to be deemed invalid and the Member will not be eligible for election unless **rule 21.3(c)** takes effect.

## **21.3 Electing Directors**

- (a) If the number of valid nominations received under **rule 21.2** is equal to the number of vacancies to be filled for the relevant position on the Board, the Members nominated shall be deemed to be elected at the AGM except where such election would contravene the composition requirements set out in **rule 20.3** in which case, election for that position must be conducted at the AGM and further nominations may be received from the floor of the AGM.

- (b) If the number of valid nominations exceeds the number of vacancies to be filled for the relevant position on the Board, elections for the positions must be conducted at the AGM.
- (c) If there are not enough valid nominations to fill the number of vacancies for the relevant positions on the Board, the candidates nominated (if any) shall be deemed to be elected (except where such election would contravene the composition requirements set out in **rule 20.3**) and further nominations may be received from the floor of the AGM.
- (d) Where the number of nominations from the floor exceeds the remaining number of vacancies on the Board, elections for those positions must be conducted.
- (e) If an insufficient number of nominations are received from the floor for the number of vacancies on the Board that remain, any of those Directors who were required to retire under **rules 21.1(c)** and **21.1(d)** is eligible for re-election, if nominated at the AGM, to fill the vacancies referred to in this rule.
- (f) The elections for office holders or ordinary Directors are to be conducted at the Annual General Meeting in the manner directed by the Board.
- (g) A list of candidates, with the names of the Members who nominated each candidate, must be given to the persons entitled to be given a notice under **rule 34**, at the end of the nomination period in a form that is determined by the board from time to time.

#### **21.4 Voting in Elections**

- (a) Subject to **rule 22.1(c)** each Member present and eligible to vote at the AGM may vote for one candidate for each vacant position on the Board.
- (b) A Member who nominates for election or re-election may vote for himself or herself.

#### **21.5 Appointment of external Directors by the Board**

- (a) The Board may appoint other persons (who need not be a member of the Association) to be Directors, but the total number of Directors on the Board who are so appointed must not at any time exceed two.
- (b) Any Director appointed under **rule 21.5(a)** is entitled to vote at Board meetings.

#### **21.6 General provisions relating to cessation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act or these Rules, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) resigns his or her office by notice in writing to the Association;

- (c) is absent without the consent of the Board from three consecutive meetings of the Board;
- (d) being a Director appointed by the Board under **rule 21.5(a)**, is removed from office as a Director by a resolution of the Board;
- (e) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature and interest as required by these Rules;
- (f) ceases to be a Member of the Association, or is suspended from Membership.

### **21.7 Suspension of Director**

- (a) If the conduct or position of any Director is such that continuance in office appears to the majority of the Board to be prejudicial to the interests of the Association, a majority of Directors at a meeting of the Board specifically called for that purpose may suspend that Director.
- (b) Within 14 days of the suspension, the Board must call a General Meeting, at which the Members may, by Special Resolution, either confirm the suspension and remove the Director from office or annul the suspension and re-instate the Director.

### **21.8 Director not to be appointed or removed**

A person cannot be appointed as a Director or removed as a Director except as expressly provided in this **rule 21**.

## **22 The President and Treasurer**

### **22.1 Election of President and Treasurer**

- (a) The President and Treasurer holding office at the time these Rules are adopted will continue to hold office until required to retire in accordance with **rule 22.1(b)**.
- (b) The offices of President and Treasurer of the Association become vacant at the conclusion of the first Annual General Meeting after these Rules are adopted and thereafter every Annual General Meeting.
- (c) A person who holds the office of President or Treasurer of the Association must retire as President or Treasurer, as the case may be, at the AGM after his or her election as President or Treasurer, but remains in office until the conclusion of that AGM and is eligible to be re-elected by the Board as President or Treasurer.
- (d) At each Annual General Meeting at which the office of President and Treasurer is due to become vacant, the Board must elect, from the Board, one of the Directors as President of the Association and one of the Directors as Treasurer of the Association.

- (e) The President and the Treasurer are elected for a one year period commencing at the end of the Annual General Meeting at which they are elected.

## **22.2 Responsibilities of the Treasurer**

The Treasurer must:

- (a) ensure all moneys payable to the Association are collected, and that receipts are issued for those moneys in the name of the Association;
- (b) ensure that the payment of all moneys referred to in **rule 22.2(a)** into the accounts or accounts of the Association as the Board may from time to time direct;
- (c) ensure timely payments from the funds of the Association;
- (d) ensure the Association complies with any account keeping requirements of the Act;
- (e) ensure the safe custody of the Accounting Records of the Association and any other relevant records of the Association;
- (f) submit to the Board a periodic report, balance sheet or Financial Statement in accordance with the requirements of the Board;
- (g) assist the Association's examiner or Auditor in performing their functions; and
- (h) perform any other duties as are imposed by these Rules or the Association on the Treasurer.

## **22.3 President and Treasurer of the Association to remain Directors**

A person who is elected to the office of President or of Treasurer of the Association:

- (a) must remain a Director while President or Treasurer of the Association;
- (b) will, notwithstanding **rule 22.3(a)**, cease to be a Director if their office of Director becomes vacant under these Rules or the Act or they are removed from office under **rule 22.4(a)** or **rule 22.5(a)**; and
- (c) is not eligible to be President or Treasurer if they have been removed from office under **rule 22.4(a)** or **rule 22.5(a)**.

## **22.4 Removal of President from office and appointment of replacement**

The President may be removed as President of the Association by the Board in the event that:

- (a) the President does not hold, or ceases to hold, the office of Director at any time during his or her term as President; or
- (b) the President loses the confidence of the Board.

## **22.5 Removal of Treasurer from office and appointment of replacement**

The Treasurer may be removed as Treasurer of the Association by the Board in the event that:

- (a) the Treasurer does not hold, or ceases to hold, the office of Director at any time during his or her term as Treasurer; or
- (b) the Treasurer loses the confidence of the Board.

## **22.6 Effects of Removal of the President or Treasurer or both**

In the event that the Board removes:

- (a) the President under **rule 22.3(a)**, the Board shall immediately, on such removal, elect a Director to temporarily assume the office of President (**Acting President**) until the next Annual General Meeting, at which time:
  - (i) the Acting President will cease to assume the office of President (effective at the end of the Annual General Meeting); and
  - (ii) a new President, who will assume office at the end of the Annual General Meeting, will be elected by the Board in accordance with **rule 22.1(b)**;
- (b) the Treasurer under **rule 22.3(a)**, the Board shall immediately, on such removal, elect a Director to temporarily assume the office of Treasurer (**Acting Treasurer**) until the next Annual General Meeting, at which time:
  - (i) the Acting Treasurer will cease to assume the office of Treasurer (effective at the end of the Annual General Meeting); and
  - (ii) a new Treasurer, who will assume office at the end of the Annual General Meeting, will be elected by the Board in accordance with **rule 22.1(b)**;

## **22.7 Status of Director removed from office as President**

Any person removed from the office of President or the office of Treasurer in accordance with **rules 22.4(a)** or **22.5(a)** shall immediately cease to be a Director on such removal taking effect.

## **23 Appointment of Executive Officer by Directors**

### **23.1 Directors may appoint**

- (a) The Board may, upon such terms and conditions and with such restrictions as they think fit, appoint an Executive Officer and confer upon the Executive Officer any of the powers exercisable by them.
- (b) The person appointed under **rule 23.1(a)** must not be a person that satisfies the description of a person referred to in section 39 of the Act would apply as if the person were a Director.

## **23.2 Power may be concurrent or exclusive**

Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Board.

## **23.3 Powers may be varied**

The Board may at any time withdraw or vary any of the powers so conferred on the Executive Officer.

## **24 Proceedings of Directors**

### **24.1 Meetings of Directors**

- (a) Subject to the Act, the Board may hold a meeting, adjourn or otherwise regulate their meetings as they think fit, but must meet at least three times in each year.
- (b) The Board may include observers at meetings of the Board and may determine that all or part of a meeting be held using Technology.

### **24.2 Calling meetings**

- (a) The President or two Directors may at any time, call a Board meeting.
- (b) A Board meeting must be called on at least 48 hours' written notice of a meeting to each Director and each Alternate Director.
- (c) 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.
- (d) Unless **rule 24.2(e)** applies, the only business that may be conducted at the meeting is the business described in the notice.
- (e) Urgent business that has not been described in the notice may be conducted at the meeting if the Directors at the meeting unanimously agree to treat that business as urgent.

### **24.3 Notice of meetings of Directors**

- (a) Notice of every Board meeting must be given to each Director.
- (b) Notice of a meeting of Directors may be given:
  - (i) in writing, by electronic mail to an electronic address or by any Technology; and
  - (ii) provided it accords with **rule 24.3(b)(i)**, in different ways to different Directors.
- (c) If notice of a meeting of the Board cannot be given to a particular Director in accordance with **rule 24.3(b)**, written notice served on:

- (i) the usual residential address of that person;
- (ii) the alternative address of that person notified under the Act; or
- (iii) such other address (including an electronic address) provided to the Association by that person for the purpose of serving notice on that person,

will constitute notice to that person of that meeting for the purposes of this **rule 24.3**.

- (c) It is not necessary to give notice of a meeting of the Board to a Director whom the Public Officer, when giving notice to the other Directors, reasonably believes to be outside Australia.

#### **24.4 Quorum for meeting of Directors**

- (a) The quorum necessary for the transaction of business shall be four Directors.
- (b) A meeting of the Board during which a quorum is present is competent to exercise all or any of the authorities, powers and discretions under these Rules for the time being vested in or exercisable by the Board generally.
- (c) The Directors do not need to be present at the same place to satisfy the quorum requirement.

#### **24.5 Procedure**

- (a) Subject to these Rules and the Act, the Directors present at the Board meeting are to determine the procedure and the order of business to be followed at the Board meeting.
- (b) A Member or other person who is not a Director may attend a Board meeting if invited to do so by the Board.
- (c) A person invited under **rule 24.5(b)** to attend a Board meeting:
  - (i) has no right to any agenda, minutes or other document circulated at the meeting; and
  - (ii) must not comment about any matter discussed at the meeting unless invited by the Board to do so; and
  - (iii) cannot vote on any matter that is to be decided at the meeting.

#### **24.6 Meetings by using technology**

- (a) The Board may, as it thinks fit, confer by any technology.
- (b) Notwithstanding that the Directors are not present together in one place at the time of the conference, the resolution passed by the Board at the conference will be deemed to have been passed at a meeting of the Board held on the day on which and at the time at which the conference was held.

- (c) The provisions of these Rules relating to proceedings of Directors apply to the conference to the extent that they are capable of applying, and with all necessary changes.
- (d) A Director present at the commencement of the conference will be conclusively presumed to have been present and, subject to other provisions of these Rules, to have formed part of the quorum throughout the conference.
- (e) A Director may not leave a meeting held by an instantaneous communication device by disconnecting his or her instantaneous communication device unless he or she has previously expressly notified the Chair of the meeting of his or her intention to leave the meeting.
- (f) Any minutes of a conference of a type referred to in **rule 24.6(a)** purporting to be signed by the Chair of that conference or by the Chair of the next succeeding meeting of Directors will be sufficient evidence of the observance of all necessary formalities regarding the convening and conduct of the conference.
- (g) When, by the operation of **rule 24.6(b)**, a resolution is deemed to have been passed at a meeting of the Board, that meeting will be deemed to have been held at such place as is determined by the Chair of the relevant conference, provided that at least one of the Board who took part in the conference was at that place for the duration of the conference.

#### **24.7 Chair**

The President shall be the Chair of Directors. If the President is absent or unwilling to act, the remaining Directors must choose one of their number to preside as Chair at the Board meeting.

#### **24.8 Votes at meetings of Directors**

- (a) Motions and resolutions arising out of any meetings of the Board will be decided by majority of votes and each Director (including the President) has one vote.
- (b) Subject to the Act, in the case of an equality of votes the Chair of the meeting of Directors will have a casting vote.

#### **24.9 Defects in appointment or qualifications of Director**

All acts:

- (a) done at any meeting of the Board; or
- (b) by any person acting as a Director,

will be as valid as if every such person had been duly appointed and every Director was qualified and entitled to vote, notwithstanding that it was afterwards discovered that:

- (c) there was some defect in the appointment of a Director or of the person acting; or

- (d) any Director was disqualified or not entitled to vote.

#### **24.10 Written resolutions**

- (a) The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs the document.
- (b) For the purposes of this **rule 24.10**, separate copies of a document (including but not limited to an electronic document) may be used for signing by Directors if the wording of the resolution and each copy is identical.
- (c) Any document referred to in this rule may be in the form of a facsimile or electronic transmission.
- (d) This rule applies to meetings of a Board committee as if all Members of the committee were Directors.

### **25 Directors' interests**

#### **25.1 Contracts Not Voidable**

No contract made by a Director with the Association and no contract or arrangement entered into by or on behalf of the Association in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

#### **25.2 Liability to Account**

No Director contracting with or who has been interested in any arrangement involving the Association is liable to account to the Association for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

#### **25.3 No disqualification from contracting**

A Director is not disqualified merely because of being a Director from contracting with the Association in any respect.

#### **25.4 Beneficial interest of Directors**

A director of a body or entity in which a Director has a direct or indirect interest may:

- (a) enter into any agreement or arrangement with the Association;
- (b) hold any office or place a profit other than as Auditor in the Association;  
and

- (c) act in a professional capacity other than as Auditor for the Association,

and the director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Association or from holding an office or place a profit and or acting in a professional capacity with the Association.

#### **25.5 Director not to be present at meetings**

A Director who has a material personal interest in a matter (including a direct or indirect pecuniary interest in a contract or proposed contract) that is to be considered at a Directors' meeting must, as soon as he or she becomes aware of that interest, disclose the nature and extent of his or her interest to the Board and must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless permitted by the Act to do so, in which case the Director may:

- (c) be counted in determining whether or not the quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

#### **25.6 Scope of rule 25.5**

**Rule 25.5** does not apply with respect to a pecuniary interest that exists only by virtue of the fact that the Director is an employee of the Association, or belongs to a class of persons for whose benefit the Association is established.

#### **25.7 Record of disclosure**

The Public Officer must record every disclosure made by a Director under **rule 25.5** in the minutes of the Board meeting at which the disclosure is made.

#### **25.8 Directors permitted to be officers**

A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Association or in which the Association may be interested as a vendor, shareholder or otherwise and is not accountable to the Association for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

## 26 PAYMENTS TO DIRECTORS

Directors are entitled to be paid:

- (a) any Directors' fees which the Members in General Meeting may decide by Special Resolution from time to time;
- (b) for out of pocket expenses incurred by the Director in the performance of any duty as Director of the Association where the amount payable does not exceed an amount previously approved by the Board;
- (c) for any service rendered to the Association by the Director in a professional or technical capacity, other than in the capacity of Director, where the provision of a service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
- (d) of any salary or wage to the Director as an employee of the Association where the terms of employment have been approved by the Board; and
- (e) relating to an indemnity in favour of the Director and permitted by these Rules and the Act.

## 27 Sub-committees and delegation

### 27.1 Appointment of sub-committee

- (a) The Board may appoint one or more sub-committees as considered appropriate by the Board from time to time to assist with the conduct of the Association's operations.
- (b) Sub-committees may comprise (in such numbers as the Board determines) Members and non-Members.
- (c) Subject to these Rules, the sub-committee Members present at the sub-committee meeting are to determine the procedure and order of business to be followed at the sub-committee meeting.

### 27.2 Delegation by Board to sub-committee

- (a) The Board may delegate, in writing to any or all of the sub-committees, any authority, power or functions and may cancel any authority, powers or functions, as the Board sees fit from time to time.
- (b) Despite any delegation under this rule, the Board may continue to exercise all its functions, including any function that has been delegated to a sub-committee and remains responsible for the exercise of those functions at all times.

### 27.3 Delegation to subsidiary offices

- (a) The Board may create and fill such subsidiary office as may be necessary for the proper and efficient management of the Association's affairs.
- (b) The Board may delegate in writing, to any person holding a subsidiary office any authority, power or functions and may cancel any authority, powers or functions, as the Board sees fit from time to time.
- (c) Despite any delegation under this rule, the Board may continue to exercise all its functions, including any function that has been delegated to a subsidiary office and remains responsible for the exercise of those functions at all times.

## 28 Minutes

### 28.1 Taking of minutes

- (a) The Board will cause the Executive Officer, Public Officer, or other authorised person to take minutes of:
  - (i) all proceedings or resolutions of General Meetings;
  - (ii) all proceedings and resolutions of meetings of the Board, including meetings of sub-committees, or committees of Directors; and
  - (iii) all resolutions passed by the Board without a meeting of Directors in accordance with these Rules.
- (b) In addition, the minutes of each Annual General Meeting must record:
  - (i) the names of the ordinary Members attending the meeting;
  - (ii) any proxy forms given to the Chair of the meeting under **rule 19.10**;
  - (iii) the Financial Statements, Financial Report, or Solvency Statement presented at the meeting, as referred to in **rules 15.2(c) and 15.2(d)**; and
  - (iv) 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 15.2(c)**.
- (c) The minutes must be duly entered and stored in accordance with the Act.

### 28.2 Certification of minutes

The Chair must ensure that the minutes of a General Meeting or Board Meeting under **rule 28.1** are reviewed and signed as correct by:

- (a) the Chair of the General Meeting or Board Meeting to which those minutes relate; or

- (b) the Chair of the next succeeding General Meeting or Board Meeting.

### **28.3 Evidence**

When minutes have been entered and signed as correct under this **rule 28**, they are, until the contrary is proved, evidence that:

- (a) the General Meeting or Board Meeting to which they relate was duly convened and held;
- (b) all proceedings recorded as having taken place at the General Meeting or Board Meeting did in fact take place at the meeting; and
- (c) all appointments or elections purporting to have been made at the meeting have been validly made.

### **28.4 Inspection**

The minutes may be inspected by a Member under **rule 31**.

## **29 Public Officer**

### **29.1 Appointment of Public Officer**

- (a) The Association must have a Public Officer at all times.
- (b) The Public Officer must be:
  - (i) a natural person;
  - (ii) at least 18 years of age; and
  - (iii) a resident of Western Australia.
- (c) The first Public Officer of the Association will be the person appointed by the Board.
- (d) The person appointed as the Public Officer must consent to the appointment in the approved form.
- (e) The Public Officer may also hold any office on the Board.
- (f) The Board may appoint any person to be the Public Officer, including a senior employee of the Association, as long as that person meets the eligibility requirements set out in **rule 29.1(b)** and does not satisfy the description of a person under section 39 of the Act.
- (g) Any act performed by the Public Officer is taken to have been validly performed even if the act was performed when there was a defect in the appointment of the Public Officer, or the Public Officer was disqualified from being a Member.

## **29.2 Vacancy in the office of Public Officer**

- (a) A vacancy occurs in the position of public officer if the Public Officer:
  - (i) dies;
  - (ii) resigns from office under rule 29.4;
  - (iii) is removed from office under rule 29.5;
  - (iv) ceases to be a resident of Western Australia; or
  - (v) is an Insolvent under administration as that term is defined in the Corporations Act; or
  - (vi) is a person that satisfies the description of a person under section 39 of the Act.
- (b) The Board must appoint a person that is eligible under **rules 29.1(b) & 29.1(f)** to fill the position of Public Officer within 28 days after the vacancy occurs.

## **29.3 Notices to be given by the Public Officer or the Association**

- (a) The Australian Business Register must be updated within 28 days of a change in Public Officer.
- (b) The Association must complete and submit the Association Information Statement within six months after the end of the Association's Financial Year including:
  - (i) the Association's current address for service; and
  - (ii) the date of the most recent Annual General Meeting; and
  - (iii) the total revenue for the last Financial Year.

## **29.4 Public Officer may resign from Office**

- (a) The Public Officer may resign from office by giving written notice to the Board.
- (b) The Public Officer resigns:
  - (i) at the time the notice is received by the Board; and
  - (ii) if a later time is stated in the notice, at the later time.

## **29.5 Removal of Public Officer**

- (a) The Public Officer may be removed from office by resolution of the Board.
- (b) At the Board Meeting to decide the proposed resolution, the Public Officer who faces removal from office must be given a full and fair opportunity to state his or her case against removal.

## 29.6 Public Officer Delegate

- (a) The Public Officer, with the approval of the Board, may appoint a person as '**Public Officer Delegate**' to exercise any power or to perform any duty of the Public Officer under the following rules:
  - (i) **rule 6.5** Lodgement with Commissioner;
  - (ii) **rule 8.5(a)** Evaluation of Applications;
  - (iii) **rule 11.2** Procedure on termination;
  - (iv) **rule 12.2(b)** Board Meeting;
  - (v) **rule 13.1(d)** Register of Members; and
  - (vi) **rule 13.2(b)** Inspecting the Register.
- (b) The person appointed as the Public Officer Delegate must consent to the appointment in the approved form and must be:
  - (i) a natural person;
  - (ii) at least 18 years of age; and
  - (iii) a resident of Western Australia.
- (c) The Public Officer Delegate appointment may be terminated by the Public Officer or Board and will be terminated if the Public Officer appointment is terminated.

## 30 Funds and accounts

### 30.1 Control of funds

- (a) The funds of the Association must be kept in an account in the name of the Association in a financial institution determined by the Board.
- (b) Subject to any resolution passed by the Association in a General Meeting, the funds of the Association are to be used in pursuance of the Objects of the Association in a manner determined by the Board.
- (c) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the Association must be authorised by:
  - (i) any two Directors; or
  - (ii) one Director and another person authorised by the Board (who need not be a Director).
- (d) Subject to any resolutions passed by the Association at a General Meeting, all expenditure must be approved or ratified at a Board meeting.

### **30.2 Source of Association funds**

- (a) The funds of the Association are to be derived from:
  - (i) Entrance Fees of Members;
  - (ii) annual Membership Fees of Members;
  - (iii) donations, grants, interest; and
  - (iv) subject to any resolution passed by the Association in General Meeting, any other source as the Board determines.
- (b) The Association must, within five days deposit all money received by the Association, to the credit of the Association's bank account, without deduction, and after receiving any money, issue an appropriate receipt.

### **30.3 Accounting Records and financial statements**

- (a) The Association must keep Accounting Records for at least seven years in accordance with the Act for the purposes of:
  - (i) preparing true and fair Financial Statements of the Association in accordance with all applicable laws and regulations; and
  - (ii) conveniently and properly auditing the Financial Statements of the Association in accordance with all applicable laws and regulations.
- (b) The Association must prepare the annual Financial Statements of the Association before the AGM each year in accordance with the Act.
- (c) The Financial Statements of the Association must be audited in compliance with Part 5 of the Act. Without limiting **rule 30.3(c)**, this includes:
  - (i) if the Association is a Tier 1 association, the preparation of the Financial Statements;
  - (ii) if the Association is a Tier 2 association or Tier 3 association, the preparation of the Financial Report;
  - (iii) if required, the review or auditing of the Financial Statements or Financial Report, as applicable;
  - (iv) the presentation to the Annual General Meeting of the Financial Statements or Financial Report, as applicable; and
  - (v) 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.

## 31 Books and records

### 31.1 Custody of the books of the Association

Except as otherwise decided by the Board from time to time, the Public Officer must keep in his or her custody or under his or her control all of the books of the Association and the Books of the Association must be retained for at least seven years.

### 31.2 Inspecting the books of the Association

- (a) Subject to these Rules and the Act, a Member is able to inspect the Books of the Association free of charge at such time and place as is mutually convenient to the Association and the Member.
- (b) A Member must contact the Public Officer to request to inspect the Books of the Association.
- (c) The Member may copy by hand details from the Books of the Association but has no right to remove the Books of the Association for that purpose.

### 31.3 Prohibition on use of information in the books of the Association

A Member must not use or disclose information in the Books of the Association except for a purpose that is directly connected with the affairs of the Association, or is related to administering the Act.

### 31.4 Returning the Books of the Association

- (a) Each outgoing Director is responsible for transferring all relevant assets and records (including Books of the Association) in his or her possession or control to the Board within 14 days of ceasing to be a Director.
- (b) Outgoing Public Officers are responsible for returning all relevant Books of the Association to the Association within 14 days of ceasing to be the Public Officer.

### 31.5 Record of Office Holders

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

### 31.6 Publication by Directors of statements about Association business prohibited

A Director must not publish, or cause to be published, any statement about the business conducted by the Association at a General Meeting or Board meeting unless:

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

## 32 Appointment of attorneys and agents

### 32.1 Appointment

The Board may, from time to time, by resolution or power of attorney, appoint any person to be the attorney or agent of the Association:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Board under these Rules);
- (c) for the period; and
- (d) subject to the conditions,  
determined by the Board.

### 32.2 Provisions of power of attorney

A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Board think fit.

### 32.3 Sub-delegation

An attorney or agent appointed under this **rule 32** may be authorised by the Board to sub-delegate all or any of the powers, authorities and discretions for the time being vested in it.

## 33 Execution of documents

### 33.1 Association may have a common seal

If the Association has a seal, known as the common seal, on which its corporate name appears in legible characters, the Public Officer or any other person as the Board from time to time decides must provide for its safe custody and it must only be used under the resolution of the Board.

### 33.2 Execution of documents with common seal

The Association may execute a document by affixing the seal to the document if the fixing of the seal is witnessed by:

- (a) two Directors; or
- (b) one Director and another person appointed by the Directors for that purpose.

### 33.3 Recording

Every use of the seal must be recorded in the Board's minute book.

### **33.4 Execution of documents without using common seal**

Subject to the approval of the Board, the Association may execute a document without using the common seal if the document is signed by the Public Officer in accordance with the Act.

## **34 Notices**

### **34.1 Service**

All notices or other communications required under these Rules or the Act must be:

- (a) in legible writing and in English addressed;
  - (i) if to a Member, to the Member's address specified in the Register; or
  - (ii) if to the Association, to the Office or such other address as from time to time notified by the Board or a person authorised by the Board;
- (b) sent to the recipient by hand, prepaid post (airmail, as to and from a place outside Australia) facsimile or e-mail; and
- (c) signed by a person duly authorised by the sender.

### **34.2 Timing**

- (a) Without limiting any other means by which a party may be able to prove that a notice has been duly received by another party, subject to **rule 34.3** a notice will be deemed to be duly received:
  - (i) if sent by hand, when left at the address of the recipients;
  - (ii) if sent by pre-paid post, the day after the date of posting;
  - (iii) if sent by facsimile, upon receipt by the sender of an acknowledgement or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number; or
  - (iv) if sent by email, after 24 hours of the e-mail being sent, provided that within that period there is no notification of e-mail transmission errors or undeliverability.
- (b) If a notice is served by hand, or is received by facsimile or e-mail on a day which is not a Business Day, or after 5.00pm (recipient local time) on any Business Day, that notice will be deemed to be duly received by the recipient at 9.00am (recipient's local time) on the first Business Day after that date. This provision also applies to receipt of notices of meeting.

### **34.3 Persons entitled to Notice**

- (a) Notice of every General Meeting shall be given in any manner hereinbefore authorised to:
  - (i) every Member having a right to attend or to attend and vote at the meeting except Members who have not supplied to the Association an address for the giving of notices to them;
  - (ii) the Auditor for the time being of the Association; and
  - (iii) such other person as required by the Act or these Rules.
- (b) No person other than the persons referred to in **rule 34.3** shall be entitled to receive notice of General Meetings.

## **35 Winding up**

### **35.1 General**

The Association may be wound up and its incorporation cancelled in accordance with the Act.

### **35.2 Surplus**

Where on the winding up of the Association or dissolution of the Association, there is a surplus of assets after satisfying all the Association's liabilities and expenses, the surplus will not be paid or distributed to the Members of the Association but will be given or transferred to such other institution or company having similar objects to those described in the Objects of these Rules, and is an institution or body and which prohibits the distribution of income, profit or assets to its Members and which is exempt from the payment of income tax. Such institution or company will be the National Association or such other institutions or bodies determined by the Members of the Association on or before the time of such winding up or dissolution.

## **36 Indemnity and insurance**

### **36.1 Indemnity**

Subject to **rule 36.2**, and to the extent permitted by the Act, the Association:

- (a) must, to the extent the person is not otherwise indemnified, indemnify each Director against any loss, cost, expense or liability incurred by reason of any act or deed done in good faith as a Director; and
- (b) may make payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by a Director in defending an action for a liability referred to in **rule 36.1(a)** or in resisting or responding to actions taken by a government agency.

## 36.2 Exceptions

No payment under **rule 36.2** may be made to indemnify any Director against any loss, cost, expense or liability incurred as a result of conduct that is adjudged by a court to be criminal or fraudulent, or involves a lack of good faith.

## 37 Severability

If anything in these Rules is unenforceable, illegal or void then it is severed and the rest of these Rules remains in force.

## 38 Definitions and interpretations

### 38.1 Definitions

In these Rules unless the contrary intention appears:

**'Accounting Records'** includes:

- (a) invoices and receipts;
- (b) promissory notes and vouchers;
- (c) other documents of prime entry;
- (d) books, registers and records (however compiled, recorded or stored) that record the documents and information necessary to explain the methods of calculations by which Financial Statements are made up; and
- (e) any other accounting records required by law (including the Act) to be maintained by the Association;

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

**'Annual General Meeting'** has the meaning ascribed to it in **rule 15.1**;

**'Association'** means the Association governed by these Rules;

**'Auditor'** means the Association's auditor;

**'Board'** means the board of Directors of the Association;

**'Books of the Association'** means all of the records, books, minute books, documents and securities of the Association;

**'Business Day'** means any day on which normal and usual business is performed and which is not a Saturday, Sunday or public holiday;

**'Executive Officer'** means the person appointed by the Board as the Executive Officer of the Association under **rule 23**;

**'Director'** includes any person occupying the position of Director of the Association;

**‘Directors’** means all or some of the Board acting as a Board;

**‘engaged in’** means to carry on, participate in, provide finance or services, or otherwise be directly or indirectly involved as a shareholder (apart from holding 5% or less of the shares of a listed company), unitholder, director, consultant, adviser, contractor, principal, agent, manager, employee, beneficiary, partner, associate, trustee or financier;

**‘Entrance Fee’** means the fees payable by new Members upon becoming a Member of the Association as set and/or varied by the Board in accordance with **rule 9.3**;

**‘Insolvent’**, in the relation to a Member means that the Member:

- (a) is or states that he or she is, an insolvent under administration or insolvent (each as defined in the Corporations Act 2001); or
- (b) has had a controller (as defined in the Corporations Act 2001) appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a receiver or manager appointed to any part of its property; or
- (c) is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Board); or
- (d) has had an application or order made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) is taken (under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand; or
- (f) is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act; or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) has had something having a substantially similar effect to any of paragraphs (a) to (g) happens in connection with that Member under the law of any jurisdiction;

**‘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’** means the Association’s financial year as described in **rule 9.3**;

**‘General Meetings’** means Annual General Meetings and Special General Meetings;

**'Member'** means a member of the Association;

**'Membership Fee'** means the fees payable by Members in respect of Membership of the Association as set and/or varied by the Board in accordance with **rule 9.2**;

**'National Association'** means Optometry Australia ACN 004 622 431;

**'Objects'** means the objects set out in **rule 5**;

**'Office'** means the Association's registered office;

**'Prescribed Percentage'** means:

- (a) 3%; or
- (b) if the percentage set out in (a) exceeds the percentage prescribed in the Act (if any), the percentage prescribed by the Act;

**'Public Officer'** means the public officer of the Association referred to in **rule 29**;

**'Public Officer Delegate'** means the public officer delegate of the Association referred to in **rule 29**;

**'President'** means the president of the Association as elected in accordance with **rule 22**;

**'Register'** means the register of Members of the Association;

**'Rules'** means these rules of the Association as amended from time to time under **rule 6**;

**'Solvency Statement'** means the statement referred to in **rule 20.8**;

**'Special General Meeting'** means a General Meeting of the Members which is not an Annual General Meeting;

**'Special Resolution'** means, a resolution:

- (a) of which notice has been given in accordance with these Rules; and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

**'Technology'** includes radio, telephone, closed circuit television or other electronic means or telecommunications device for audio or audio-visual communication;

**'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; and

**'Treasurer'** means the treasurer of the Association as elected in accordance with **rule 22.1**.

## **38.2 Interpretation**

In these Rules, unless the contrary intention appears;

- (a) one gender includes the other;
- (b) words (including defined expressions) importing the singular include the plural and vice versa;
- (c) a person includes a body corporate;
- (d) words and expressions defined in the Act have the same meaning in these Rules;
- (e) headings are for ease of reference only and do not affect the construction of these Rules;
- (f) 'Including' and similar expressions are not words of limitation; and
- (g) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether the same or any other legislative authority having jurisdiction).

Schedule 1 Nomination for Election

I,	
	(Insert FULL NAME of member – BLOCK letters)
of	
	(address of member)
being a member of Optometry Western Australia, (' <b>Association</b> ')	
NOMINATE	
	(Insert FULL NAME of nominee– BLOCK letters)
of	
	(address of proxy)
as a candidate for election for the office of Director of the Association at the Annual General Meeting held on:	
and at any adjournment of that meeting.	
(insert date of meeting)	
This nomination is seconded by:	
	(Insert FULL NAME of seconder– BLOCK letters)
of	
	(address of seconder)
also, a member of the Association.	
Details of the nominated Member's business interests in accordance with rule 21.2(c)(ii):	

SIGNATURE OF Member:

DATE: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

SIGNATURE OF Seconder:

DATE: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Schedule 2 Form of Appointment of Proxy

I,	
	(Insert FULL NAME of member – BLOCK letters)
of	
	(address of member)
being a member of the Optometry Western Australia, (' <b>Association</b> ') and entitled to vote,	
APPOINTS	
	(Insert FULL NAME of proxy – BLOCK letters)
of	
	(address of proxy)
being a (insert type) Member of the Association and entitled to vote, as my proxy to vote for me on my behalf at the	
<input type="checkbox"/> Annual Special Meeting; or <input type="checkbox"/> Special General Meeting	
of the Association to be held on:	
and at any adjournment of that meeting.	
(insert date of meeting)	
My proxy is authorised to vote	
<input type="checkbox"/> in favour of <input type="checkbox"/> against	
the following resolution (insert details of resolution):	

SIGNATURE OF Member:

DATE: \_\_\_\_ / \_\_\_\_ / \_\_\_\_